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A.F.R.

Reserved on 16.10.2023

Delivered on 22.12.2023

WRIT - A No. - 17887 of 2022

Dr. Sheo Kumar ...Petitioner

Vs.

State of U.P. and others ...Respondents

With

WRIT – A No. - 11798 of 2021

Dr. Jitendra Singh Kushwaha ...Petitioner

Vs.

State of U.P. and others ...Respondents

With

WRIT – A No. - 4236 of 2022

Sheo Kumar ...Petitioner

Vs.

State of U.P. and others ...Respondents

Hon'ble Ajit Kumar, J.

1. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Kunal Shah, learned counsel for the petitioner, Sri Sanjay Kumar Om and Sri F.A. Ansari, learned counsel appearing for Public Service Commission in respective petitions and Sri V.K. Singh, learned Senior Advocate assisted by Sri Kandarp Narayan and Sri Gaurav Pundir, learned counsel appearing for Dr. Jitendra Singh Kushwaha (respondent No.5 in Writ-A No.17887 of 2022 and petitioner in Writ-A No.11798 of 2021).

2. Writ-A No.17887 of 2022 has been filed by Dr. Sheo Kumar, whose selection has been cancelled by the Uttar Pradesh Public Service Commission (hereinafter referred to as “ the Commission”) vide its order dated 10.08.2022, which is under challenge, whereas Writ-A No.11798 of 2021 has been filed by Dr. Jitendra Singh Kushwaha questioning the

selection of Dr. Sheo Kumar as Principal (Allopathy) in the Department of Medical Education on the ground that he did not possess the requisite experience under the relevant Recruitment Rules.

3. Writ-A No.17887 of 2022 is being taken up as a leading petition. The controversy involved in afore-captioned petitions is very short; as to whether the experience as an Additional Professor in a Medical College would also count as experience of a Professor, which a candidate is required to possess to become Principal of a Medical College under the relevant Rules.

4. Dr. Sheo Kumar has experience as an Additional Professor from 01.07.2013 to 30.6.2017 and then as Professor with effect from 01.07.2017 to 13.07.2020 and then from 14.07.2020 to 13.05.2021, thus total period of experience taking the post of Additional Professor and Professor together, Dr. Sheo Kumar has an experience of eight years.

5. The post of Principal (Allopathy) in the Department of Medical Education was advertised by the Commission on 22.12.2021 vide advertisement No.3/2020-21. For the purposes of essential qualifications, it prescribed that a candidate should possess (i) MD/MS or an equivalent qualification recognised by Medical Council of India (hereinafter referred to as "MCI") and (ii) at least 10 years teaching experience as a Professor/Associate Professor/Reader in a recognised Medical College/Institution, out of which atleast five years should be as a Professor in a Department. These were the basic qualifications prescribed for.

6. Both the petitioner and respondent No.5 applied for the post in question and petitioner came to be selected provisionally vide notification dated 20.07.2021 issued by Deputy Secretary of the Commission. While the provisional selection was notified by the Commission, Dr. Jitendra Singh Kushwaha, the other applicant filed, a writ petition before this Court questioning the provisional selection of the petitioner and prayed for a mandamus that he may be taken to be selected and be recommended for appointment. Later, amending the writ petition, he also challenged the order

of the Chief Secretary, Government of U.P. dated 10.01.2022 whereby a clarification was made by the State Government that qualification for the post of Professor and Additional Professor being the same, the teaching experience of both Additional Professor and Professor should be taken to be as of a Professor and, therefore, Dr. Sheo Kumar was absolutely eligible for the post in question.

7. Sri Ashok Khare, learned Senior Advocate assisted by Sri Kunal Shah, learned counsel appearing for the petitioner Dr. Sheo Kumar has submitted that in the State of U.P. while State Medical Colleges have 3-tier hierarchical system of teaching faculty with Assistant Professor, Associate Professor and Professor, the Institution like Sanjay Gandhi Postgraduate Institute has 4-tier system with the post of Assistant Professor, Associate Professor, Additional Professor and Professor. He submits that though there is little difference in the pay-scale between the post of Additional Professor and Professor but for the purposes of essential qualifications for a candidate to be appointed as Additional Professor and Professor is the same, inasmuch the teaching work/ assignment both for Additional Professor and Professor is the same. In support of his contention, learned Senior Advocate has relied upon the guidelines issued by the National Medical Commission in which it had come to be recorded that many institutions have 4-tier faculty designation system while others have 3-tier faculty designation system. So the query was where does one equate as Additional Professor, the answer by the National Medical Commission was that Additional Professor is to be equated to a Professor. Sri Khare submits that the Medical Council of India (hereinafter referred to as "MCI") has also prescribed academic qualifications for the post of Professor and Additional Professor as same, according to which one should have eight years of postgraduate experience and must possess qualification of MD/MS/DNB in the concerned subject as per the regulations. Sri Khare has also taken the Court to the earlier notification issued by the Board of Governors of the MCI dated 13.12.2018, which prescribes that as far as MCI norms are concerned, Professor and Additional Professor are equivalent. Sri

Khare submits that when confusion arose as to the experience of the petitioner as a Professor for the post of Principal (Allopathy), the Commission wrote a letter dated 27.11.2021 to the State Government seeking its guideline to the issue, as to whether experience of a candidate as Additional Professor would be admissible as a Professor and the State Government vide its letter dated 10.01.2022 answered that in the considered view of the Government, those Professors working in Government Medical Colleges and Additional Professors working in SGPGI since were discharging similar duties and their nature of work was the same, therefore, they could be equated and thus Dr. Sheo Kumar possessed the requisite qualification. He further submits that in writ petition filed by Dr. Jitendra Singh Kushwaha, this Court vide order dated 08.10.2021 had directed the Director General, Medical Education and Training, Uttar Pradesh to take a decision with regard to the equivalence of qualification, insofar as it related to the experience on the post of Additional Professor/ Professor in consultation with National Medical Commission. In compliance of this Court's order dated 08.10.2021 corrected on 22.10.2021, a decision was taken by the State Government on 10.01.2022. However, upon repeated query being made by the Commission vide its letter dated 28.04.2022, the Government vide order dated 30.05.2022 reiterated its stand that since the work and discharge of duties on the posts of Additional Professor and Professor were the same, their respective experiences were logically required to be equated and thus the experience as an Additional Professor would count towards the experience of a Professor. Sri Khare submits that the order dated 30.05.2022 is not under challenge and has attained finality. He further argues that after the State Government took a conscious decision both in the light of the direction issued by this Court in the writ petition filed by Dr. Jitendra Singh Kushwaha and the query made by the Commission in its letters dated 27.11.2021 and 28.4.2022, it was not open for the Commission to have cancelled the selection made in respect of the petitioner Dr. Sheo Kumar. Sri Khare also argues that the order passed by the Commission is quite a cryptic order and does not deliberate upon the issue

involved in the matter, nor does it discuss the notifications and resolution of the MCI and the State Government and, therefore, the order impugned cannot be sustained in the eyes of law and deserves to be quashed.

8. Learned counsel appearing for the Commission Sri Sanjay Kumar Om and Sri F. A. Ansari appearing in respective petitions argue that once the post has been advertised requiring the experience as Professor, there was no justification to accept the experience of an Additional Professor as a Professor. They further argue that recruitment and selection body is not empowered to change or relax the qualifications as prescribed for in the advertisement or in the absence of any relaxation or equivalence prescribed for in the advertisement, the recruitment and selection body cannot on its own accept the equivalent qualification or otherwise set up any definition to the qualification prescribed for the post. They further argue that the Professor means Professor and will not include Additional Professor. They argue that even in the notifications issued by the State Government dated 10.01.2022 and 30.5.2022, it has been very categorically stated that one should possess the experience of five years as Professor, so they argue that there is no dilution of the essential qualifications and any interpretation to incorporate within it the experience of an Additional Professor, would amount to a legislative act which is beyond the scope of the authority of the recruitment and selection body. They further argue that the petitioner had been only provisionally selected and, therefore, his selection was subject to his furnishing requisite certificates of experience regarding which he had furnished his undertaking but failed to do so. In this connection they have drawn the attention of the Court to Annexure No.3 to the counter affidavit filed on behalf of the Commission to justify that a conscious decision has been taken by the Commission. They have defended the order passed by the Commission cancelling the provisional selection of the petitioner Dr. Sheo Kumar as Principal (Allopathy) in the Department of Medical Education, U.P. for the reasons assigned therein.

9. Sri Vijay Kumar Singh, learned Senior Advocate assisted by Sri Kandarp Narayan and Sri Gaurav Pundir, learned counsel appearing for contesting respondent No.5-Dr. Jitendra Singh Kushwaha, has argued that whatever be the resolutions of the MCI or the guidelines answering the query being made with regard to the experience, the Rules provide for only experience as a Professor and not as Additional Professor. He submits that even though the essential qualifications for recruitment on the post of Professor and Additional Professor in those colleges, where they have 3-tier or 4-tier faculty designation system, is the same but the legal position stands that the post of Additional Professor is of a lower cadre post in terms of pay-scale. He argued that experience has to be commensurate to the post and any equation of experience, if permitted to hold even an Additional Professor to be eligible to the post of Principal, would amount to substituting the qualification originally prescribed under the Rules. He submits that if it is permitted, as per the notifications made by the State Government without amending recruitment/service Rules, it would amount to changing the eligibility criterion which is certainly beyond the scope of authority of the recruitment and selection body. He argues that this amounts to changing the eligibility criterion altogether in contravention to what is prescribed under the Rules. He submits that legal position regarding change in qualification or eligibility criterion at the end of the recruitment and selection body is not permissible. He submits that there could be a case that many Additional Professor may not have applied on the ground that they did not possess the requisite experience as Professor. He has placed reliance upon the judgments of the Supreme Court rendered in **U.P. Public Public Service Commission U.P. Allahabad and Another v. Alpana, (1994) 2 SCC 723; Yogesh Kumar and Others v. Govt. of NCT, Delhi and Others, (2003) 3 SCC 548; Bedanga Talikdar v. Saifudaullah Khan and Others, (2011) 12 SCC 85 and Sanjay K. Dixit and others and The State of Uttar Pradesh and Others, (2019) 17 SCC 373.**

10. Having heard learned counsel appearing for respective parties and having perused the record, in my view, following questions arise for consideration in these petitions:

(i) Whether defining the experience of a Professor by including experience of Additional Professor would amount to encroaching upon the Rule making power and thereby changing the essential qualification prescribed for under the relevant Rules and, therefore, the Commission was justified in cancelling the provisional selection or conversely, the clarification made as to the experience by the State Government vide letters dated 10.01.2022 and 30.05.2022 was to answer the query and remove the confusion, if created superficially and, therefore, would not amount to changing qualification, inasmuch as such a clarification is not a faulty one and so the clarification made under the letters do not suffer from any illegality and Commission was not justified in cancelling selection of petitioner.

11. In order to find the answer to the questions so formulated above, it is necessary to look into first the essential qualifications as prescribed under the Rules and then to test the notifications made by the State Government and experience for the post of Professor which is sought to be defined. There is no doubt that minimum qualifications for teachers in medical education institutions are prescribed as per the regulations framed by the MCI in the year 1998, which have been amended from time to time. It prescribes for the post of Professor/Additional Professor, the following qualifications as essential qualification :

Posts	Academic Qualification	Teaching & Research Experience
Professor/Addl. Professor (8 years of Post PG Experience)	A post graduate qualification MD/MS in the concerned subject and as per the TEQ Regulation	Associate Professor in the subject for 3 years in a permitted/approved/recognized medical college/institution with 4 Research Publications in Indexed Journal on Cumulative basis with minimum of 2 Research Publication during the tenure of Associate Professor as Ist Author

		or as corresponding author.
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12. From the perusal of the above, it is clear that as far as the post of Additional Professor and Professor are concerned, academic qualifications have been kept at par. For the post of Principal/Dean/Director of Medical Colleges, following qualifications have been prescribed for:

Post	Academic Qualifications	Teaching/Research Experience
Principal/ Dean/ Director of Medical Institution	Should possess the recognised postgraduate medical qualification and other academic qualification from a recognized institution with a minimum of ten years' teaching experience as Professor/Associate Professor/Reader in a medical college/Instt. Out of which atleast five years should be as Professor in a department. Preference for these appointments may be given to the Heads of the Departments.	

13. The Board of Governors in supersession of MCI, while being queried upon, made a reply vide letter 13.12.2018 that the academic qualification and the teaching and research experience for the post of Professor and Additional Professor have been kept the same, so as per the MCI they are equivalent but it was left open for the concerned appointing authority to prescribe higher norms than what was prescribed under the Minimum Qualification for Teachers Regulations 1998. The reply made to the query is reproduced herein as under:

“This is with reference to your email dated 11.12.2018 and order dated 11.12.2018 passed by the Hon'ble High Court in the above captioned matter. In this regard I am directed to inform you that as regards the qualification and experience prescribed for appointment Professor/Addl.

Professor in Broad Specialities [MD/MS] in Minimum Qualification for Teachers Regulations 1998 is as under:

Posts	Academic Qualification	Teaching & Research Experience
Professor/Addl. Professor (8 year of Post PG Experience)	A post graduate qualification MD/MS in the concerned subject and as per the TEQ Regulation	Associate Professor in the subject for 3 years in permitted/approved/recognized medical college/institution with 4 Research Publications in Indexed Journal on Cumulative basis with minimum of 2 Research Publication during the tenure of Associate Professor as 1st Author or as corresponding author.

The above position has been notified in Minimum Qualification for Teachers Regulations, 1998 on 05.06.2017 & again 01.11.2018 copy enclosed.

Therefore in so far as MCI norms are concerned Professor/Add. Professor are equivalent. However, it is for the concerned appointing authority to lay down/prescribe norms higher than that prescribed in Minimum Qualification for Teachers Regulations, 1998.

This issues with the approval of Secretary General, Board of Governors.”

The National Medical Commission (NMC) also published the answer to the queries made from time to time for the academic year 2021-22. The NMC also made a specific reply to such query vide its clause 11, which reads as under :

“Many Institutions follow a 4-tier faculty designation system - Assistant Professor, Associate Professor, Additional Professor and Professor. For the purposes of our assessment, which has only 3 levels, where does one equate the Additional Professor?

Additional Professor is to be equated to a Professor.”

(Emphasis added)

14. It is also interesting to notice here that Board of Governors also reiterated the academic qualification and teaching & research experience for

the post of Professor and Additional Professor to be the same, which is reproduced herein as under:

**“BOARD OF GOVERNORS
IN SUPERSESSION OF MEDICAL COUNCIL OF INDIA
NOTIFICATION**

New Delhi, the 12th February, 2020

No. MCI-12(2)/2019-Med.Misc./189334.- *In exercise of powers conferred by Section 33 of the Indian Medical Council Act, 1956 (102) of 1956), in Supersession of the Medical Council of India with the previous sanction of the Central Government hereby makes the following Regulations to further amend the “Minimum Qualifications for Teachers in Medical Institutions Regulations 1998, namely:-*

1. (i) *These regulations may be called the "Minimum Qualifications for Teachers in Medical Institutions (Amendment) Regulations, 2019".*

(ii) *They shall come into force from the date of their publication in the Official Gazette.*

2. *In the "Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 in Schedule 1 clause 6 as amended vide notification dated 01.11.2018, shall be substituted with the following:-*

"The Teachers in a medical college or institutions having a total of 8 years teaching experience out of which at least 4 years teaching experience as Assistant Professor with atleast one research publication in indexed journals (as indicated in table) gained after obtaining postgraduate degree shall be recognized as post graduate teacher in broad specialities.

In case of super specialities only those teachers who possess 5 years teaching experience out of which at least 2 years teaching experience as Assistant Professor gained after obtaining the higher speciality degree shall be recognized as post graduate teacher.

I. Broad Specialities (MD/MS/DNB)

Posts	Academic Qualification	Teaching & Research Exp.
Professor/Addl. Professor (8 years of Post PG Experience)	A post graduate qualification MD/MS/DNB in the concerned subject and as per these Regulations	(i) Associate Professor in the subject for 3 years in a permitted/approved/recognized medical college/institution with three Research publications (atleast two as Associate Professor) (only original papers, meta-analysys, systematic reviews, and case

		<p>series that are published in journals included in Medline, Pubmed Central, Citation index, Sciences Citation index, Expanded Embase, Scopus, Directory of Open access journals (DoAJ) will be considered). The author must be amongst first three or should be the Corresponding author.</p> <p>(ii) Should have completed the Basic course in Medical Education Technology from Institution(s) designated by MCI.</p> <p>(iii) Should have completed the Basic course in biomedical research from Institution(s) designated by MCI.</p> <p>Further provided that for the transitory period of 2 years w.e.f. the date of this notification, the appointment/ promotion to the post of Professor can be made by the institution in accordance with the "Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998" as prevailing before issuance of this notification.</p>
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15. The essential qualifications that have been prescribed for, by the MCI in its Regulations have been adopted by the State Government and the same qualifications in terms of academic qualification have been prescribed for, under the advertisement in question for the post of Principal (Allopathy) in the Department of Medical Education. The relevant part of the advertisement that contains the post and educational qualifications etc. is reproduced as under:

“Medical Education Deptt. U.P. (Allopathy)

01 (One) Post of Principal (Allopathy) (General Recruitment), Deptt.No.(S-8/60), Nature of post-Gazetted/Temporary, Reservation- Unreserved/Pay Scale-Rs. Academic Level 14, Initial Pay Rs.1,44,200/-.

Essential Qualification:- (i) M.D./M.S. or an equivalent qualification recognized by Medical Council of India, (ii) atleast 10 years Teaching experience as professor/Associate Professor/Reader in a recognized Medical College/Institution out of which atleast five years should be as a Professor in a department. **Preferential qualification:-** Reference for these appointments may be given to the heads of the department in a medical college or as head in Medical Institution. **Age Limit-** Minimum 50 years and maximum 62 years. No Private Practice is permissible but an allowance will be given in lieu thereof as per government orders. Selected candidates can be appointed/transferred in public interest in any of the Govt. Medical Colleges of U.P. **Note :-** Essential qualification is required to be recognized by MCI otherwise candidature will not be considered.”

16. Relying upon the qualifications prescribed for the post of Professor and Additional Professor, the State Government came to reply the query made by the Commission and also in compliance of the order of this Court passed in Writ-A No.11798 of 2021 that for the purposes of experience, the experience gained as Additional Professor in SGPGI and as a Professor there or in any other medical college deserved to be equated and so also logically as the discharge of duty and the work and/or assignment in the field of teaching are the same.

17. Testing the argument of Sri Khare that this act of defining the experience for the purposes of eligibility would not amount to ‘*changing the qualifications prescribed for under the Rules*’ or eligibility criterion otherwise, a legal plea advanced by learned counsel appearing for the respondents, I find that the experience as a Professor deserved scrutiny from the point of view of the qualifications prescribed by the MCI and clarificatory notifications/letters issued by it. While it is true that the Rules provide for requisite number of years of experience as Professor, in some

department there is 4- tier system whereas in the large number of departments/institutions/universities there is 3- tier system faculty.

18. What can be a better Institution to All India Institute of Medical Sciences in the field of medical education setting up example, norms and quality of teaching and producing doctors in various disciplines and these norms as set by the AIIMS have been followed by adoption in various regional institutes of medical education like Postgraduate Institute of Medical Science at Lucknow, U.P. There is a circular letter issued by the SGPGI, Lucknow on 27.01.2012 that says that the new career progression scheme in respect of faculty members at par in AIIMS, New Delhi is hereby implemented in Institute in accordance with the orders issued by Government of India, Ministry of Health & Family Welfare dated 12.01.2010. It records that Government of Uttar Pradesh vide its letter dated 01.02.2011 has also accorded approval for the same. This letter prescribes for pay scale of both the Additional Professor and Professor under Pay Band-4 (Rs.37,400 - Rs.67,000/-) with a difference of Rs.1000/- in grade pay, as the grade pay of Additional Professor would be Rs.9,500/- but Rs.10,500/- in case of Professor. In between Associate Professor and Professor, there is a post described as Additional Professor. In SGPGI, a Professor is required to have four years experience as an Additional Professor. This is a career advancement scheme with a difference of grade pay only and not the pay scale. The circular dated 27.01.2012 is reproduced herein as under:

***“No.6911/PGI/DIR/DC/2012
Dated 27th January, 2012***

OFFICE ORDER

In continuation to Office Order No.6129/DIR/PGI/ER/-Acad/3090/2010 dated 6 October 2010, New Career Progression Scheme in respect of faculty members at par with AIIMS, New Delhi is hereby implemented in the Institute in accordance with orders issued by the Government of India, Ministry of Health & Family Welfare vide their letter No.V.16020/57/2008-ME-1 dated 12.01.2010 and as per provisions of First Regulations, 2011 of the Institute. The Government of Uttar Pradesh vide their letter No.4090/71-2-

11-42/2009 Dated 1st February, 2011 has also accorded approval for the same.

The following provisions have been made by the Government of India for revision of pay scales/Career Progression Scheme for faculty (teaching staff) of AIIMS, New Delhi vide their order No. V.16020/57/2008-ME-1 dated 12.01.2010:

I. Assistant Professor (Entry Grade):

To be placed in Pay Band-3 (Rs. 15600-39100); minimum Pay to be fixed at Rs.30000/- with Academic Grade Pay of Rs.8000/-. After three years, Assistant Professors will move to Pay Band-4 (Rs.37400-67000/-) with Academic Grade Pay of Rs.8700/-.

The eligibility criteria for appointment as Assistant Professor (Medical & Non-medical) will be the same as prescribed by the Government of India, Ministry of Health & Family Welfare vide their letter No. V.16020/57/2008-ME-1 dated 12.01.2010.

II. Associate Professor:

To be placed Pay Band-4 (Rs.37400-67000) subject to minimum Pay being Rs.42800/- and Academic Grade Pay of Rs.9000/-. Assistant Professor with three years of service will be eligible for appointment to the post of Associate Professor subject to clearance of the prescribed selection process.

III. Additional Professor:

They will be placed Pay Band-4 (Rs.37400-67000) with minimum Pay being Rs. 46000/- and Academic Grade Pay of Rs. 9500/-. Associate Professor with three years of service will be eligible for appointment to the post of Additional Professor subject to clearance of the prescribed selection process.

IV. Professor:

They will be placed in Pay Band-4 (Rs.37400-67000) with the minimum Pay of Rs.51600/- and Academic Grade Pay of Rs.10500/-. Additional Professors with four years of service will be eligible for appointment to the post of Professor subject to clearance of the prescribed selection process.

Upto 40% of posts of Professors will be operated in new Higher Administrative Grade (HAG) scale of Rs. 67000-79000/-. Promotion to this grade will be subject to clearance of the prescribed selection process.

The Career Progression Scheme shall be implemented notionally w.e.f. 01.07.2008 subject to condition that pay fixation and other financial benefits are not allowed from a date prior to 31.12.2008 as decided by the Government of India, Ministry of Health & Family Welfare vide their letter No.V.16020/11/2009-ME-1 dated 30.03.2010.

The rest terms and conditions shall be as per directives issued by the Government of India, Ministry of Health & Family Welfare vide their letters No.V.16020/57/2008-ME-1 dated 12.01.2010 and No.V16020/11/2009-ME-1 dated 30.03.2010.

The above orders are being issued with the approval of the Department of Medical Education, Government of Uttar Pradesh.

Sd. illegible
(PROF. R.K. SHARMA)
DIRECTOR”

19. Recently on 14.02.2022, National Medical Commission has floated Teachers Eligibility Qualifications in Medical Institutions Regulations, 2022. Regulation 6 of the Regulations prescribes for Faculty Appointment and Promotion, Teaching and Research Experience and the Academic Qualifications. This regulation provides for only Professor, Associate Professor, Assistant Professor, Senior Resident. Now, post of Professor being relevant here, the essential qualifications in terms of academic qualifications and the research experience are reproduced herein as under:

Posts	Academic Qualifications	Teaching and Research Experience
Professor 8 year post PG experience	MD/MS/DNB in the concerned subject.	<p>i. Associate Professor in the subject for three years in a permitted/recognized medical college/institution.</p> <p>ii. Should have at least four Research publications (at least two as Associate Professor) [only original papers, meta-analysis, systematic reviews, and case series that are published in journals indexed in Medline, PubMed, Central Science Citation Index, Science Citation Index, Expanded Embase, Scopus, Directory of Open Access Journals (DoAJ) will be considered].</p> <p>iii. Should have completed the</p>

		<p>basic course in Medical Education Technology from Institutions designated by NMC.</p> <p>iv. Should have completed the Basic course in Biomedical Research from Institutions designated by NMC.</p>
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20. Thus, for a Professor, a candidate is required to possess eight years teaching experience at postgraduate level and three years teaching experience as an Associate Professor in a recognised medical college/institution. As per the Medical Council of India that frames Rules and Regulations for academic qualifications for different categories of posts in the field of medical education, a Professor is required to possess experience of teaching at postgraduate level and also having at least three years as Associate Professor, so essentially the requirement is that eight years teaching experience, which would include teaching experience of Associate Professor for three years for professor.

21. Now, looking to the circular of the SGPGI, a person would be getting promotion as Additional Professor after three years of service as an Associate Professor. Meaning thereby, those who are to be promoted as Additional Professor shall have to have three years experience of Associate Professor. Thus, feeding cadre of the Additional Professor is Associate Professor. The conclusion, therefore, would be that Additional Professor is above to the Associate Professor and since the Medical Council of India has defined experience of Professor as including of Additional Professor and the NMC has equated the posts, no other body can interpret experience as to qualification otherwise.

22. Both the MCI and NMC therefore, would be the only authorities to define the experience and it having defined in its wisdom the experience of a Professor to include the experience of an Additional Professor, the essential qualification/eligibility criterion for the two posts to be the same, this Court

cannot sit in appeal to take a view contrary to what a body of experts in the field, has taken.

23. It is not the case of the respondents that the petitioner did not possess the eight years teaching experience at postgraduate level or that the petitioner had no experience as an Associate Professor. All that has been questioned is that his experience of Professor to be specific five years would not include his experience as an Additional Professor.

24. The Commission had also selected the petitioner for the post of Principal (Allopathy) in the Department of Medical Education, for the documents of experience furnished by him. It being not a case of “walk-in-interview”, the applications were invited to shortlist the candidates on the basis of documents furnished by them, so the Commission could have rejected the candidature of the petitioner on the ground that the petitioner did not possess the requisite qualifications but it admitted his application and the candidature, though selected him provisionally only subject to his furnishing the experience certificate both of Professor and Additional Professor. While the petitioner could have done something, the litigation intervened and this Court also in its order directed the State Government to take a proper decision. The State Government, therefore, took a conscious decision to hold that the post of Additional Professor and Professor are equated for the purposes of experience. The State being the employer has issued clarifications and these clarifications cannot said to changing the Rules of recruitment on the post as to essential qualification in the midst of selection process. I do not, therefore, find any good ground to hold the decision taken by the State Government to be bad, as it stands in conformity with the guidelines of the MCI.

25. In view of what I have already discussed above, the arguments advanced by learned Senior Counsel appearing for the contesting respondent and the learned counsel appearing for the Commission that the petitioner did not possess the requisite qualification of teaching experience as a Professor cannot be accepted. The authorities that have been relied upon by the learned

Senior Counsel appearing for the contesting private respondent in the case of **U.P. Public Service Commission v. Alpana (supra)**, is distinguishable on facts. In that case, for the post of Munsif Magistrate as then existed, the requirements were that a candidate must possess on the last date fixed for receipt of applications a “*degree of Bachelor of Laws of a University established by law in Uttar Pradesh or any other University of India recognised for this purpose by the Governor which entitles him to practice in courts of law or be an Advocate, Vakil or Pleader on the roll of or be entitled to practice in the High Court of Judicature at Allahabad or Courts Subordinate thereto*”. The advertisement required a candidate to submit Law Degree, Examination Certificates and Marksheets by the last date as prescribed under the advertisement and such documents were to be in the form of attested copies. The petitioner in that case had appeared in the law degree examination and cleared the examination but the Public Service Commission did not call her for interview on the ground that she did not possess law degree on the last date of filling up the form. Being aggrieved, she approached the High Court and the High Court though directed the Commission to call her for interview but her interview result was directed to be withheld. When the High Court finally disposed of the writ petition directing the Commission to declare the result of the petitioner and, if successful, to forward her name to the State Government for appointment with a further direction that in the event there was no post available a supernumerary post should be created for her appointment, the Public Service Commission questioned the judgment before the Supreme Court by way of Special Leave Petition, and the judgment was reversed by Supreme Court. Supreme Court in the background of these above facts held that there shall be no estoppel against law, even if a candidate, who is allowed to appear in written part of the competitive examination. If he did not possess required qualification on the last date of submitting of application form, he would not be entitled to any selection or appointment. Here is not the case that the petitioner did not possess the required qualification but the case is as to the interpretation of the qualification that the petitioner did possess,

whether to fall within the qualification prescribed for or not. Since highest body, the Medical Council of India and National Medical Commission interpreted that the Professor includes an Additional Professor, I see no justification to hold that the petitioner did not possess requisite qualification of experience as Professor on the last date of submission of the application form with the Commission.

26. The judgment in the case of **Yogesh Kumar and others (supra)** relied upon by the learned counsel appearing for the contesting private respondent relates to Teachers Training Certificate and the question was as to whether B.Ed., which is a higher qualification, can be taken to be equivalent to Teachers Training Certificate. The Court in that background held that the qualification in terms of degree or certificate, which is required for the purposes of post in question, would matter and not higher qualification. The Supreme Court held that “*so far as B.Ed. qualification is concerned, in the connected appeals [CA No. 1726-28 of 2001] arising from Kerala which are heard with this appeal, we have already taken the view that B.Ed. qualification cannot be treated as a qualification higher than TTC because the nature of training imparted for grant of certificate and degree is totally different and between them there is no parity whatsoever. It is projected before us that presently Yogesh Kumar And Others vs Government Of Ntc Delhi And Others on 5 March, 2003 Indian Kanoon - <http://indiankanoon.org/doc/1021541/> 2 more candidates available for recruitment to primary school are from B.Ed. category and very few from TTC category. Whether for the aforesaid reasons, B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed. candidates for the present vacancies advertised as eligible. In our view, the division bench of the Delhi High Court was fully justified in coming to the conclusion that B.Ed. candidates were rightly excluded by the authorities from selection and appointment as primary teachers”.*

27. One must remember that there is distinction between a recognized course and experience of teaching, which is required for a post. A person, if required to possess a particular degree or a certificate and the advertisement does not require any equivalent qualification thereto, even if one possesses a higher degree or certificate, it would not amount to a certificate required under the advertisement for a candidate to possess. So far as experience part is concerned as a teacher, this can always be subjected to interpretation and the authoritative body in the field would require to interpret it and those who do not have expertise in the field, are not supposed to take a different view. Here is a case, where the experience of a Professor has been defined to include teaching experience as an Additional Professor also. There is no mechanism to know what would be difference in taking postgraduate classes as Additional Professor and as a Professor and so, it is not for this Court to review such interpretation made by a body of experts in the field of medical education. Such bodies of experts like Medical Commission and Medical Council have laid down guidelines for the purposes of appointment, promotions and others service benefits. So, even this judgment in the case of **Yogesh Kumar and others (supra)** would not be of any help to respondents.

28. In so far as the judgment in the case of **Bedanga Talukdar (supra)** is concerned, which has been relied upon by learned Senior Counsel appearing for contesting private respondent particularly putting emphasis on what has been held in paragraph No. 29 and 30 thereof, I find it to be dealing with the selection process to be undertaken strictly as per stipulated selection procedure and unless and until there is power of relaxation prescribed under the advertisement in terms of qualifications, the selecting body would be transgressing its authority in relaxing the same. In my considered view, in the present case, there is no relaxation as such involved which can be said to have been given to the petitioner by the Commission, initially when it required a candidate to furnish an experience certificate. The experience certificate of Professor would include the experience as Additional Professor

as a matter of interpretation and not relaxation. Had it been the case that teaching experience as a Professor was directed to include the teaching experience of an Associate Professor beyond three years to make complete ten years teaching experience in postgraduate classes, it could have been said that the Commission was not justified in relaxing the criterion. I do not see any such relaxation has been offered to the petitioner in the matter.

29. The last judgment relied upon by the learned Senior Counsel appearing for the contesting private respondent is of **Sanjay Kumar Dixit's case (supra)**, in which **Bedanga Talukdar's case (supra)**, just referred to above, was also relied upon. The principle, as was laid down in **Bedanga Talikdar's case (supra)** is not debatable and I would see it to be in tune with the settled law on the point but I find that in **Sanjay Kumar Dixit's case (supra)** the question relates to whether completion of 80 hours of CCC issued by DOEACC could have further been relaxed or not. In that case, a large number of candidates could not produce CCC certificate issued by the DOEACC at the time of interview. The Chairman/Managing Director of the Power Corporation gave an extension of time for submitting the said certificate to those, who have earlier been found meritorious, and permitted them to participate in interview without submitting CCC certificate issued by DOEACC. This became a question of litigation, as the notification came late to make it impossible for others to appear in interview, who also did not have CCC certificate on that date. Rule 45 of the U.P. Rajya Vidyut Parishad Parichalika Karmchari Varg Sewa Niyamawali, 1995 was relied upon by the learned Single Judge of the High Court to hold that Chairman/Managing Director of the Corporation had the power and competence to relax the rule. The division bench partly allowed the writ petition and directed that all those candidates, who had submitted the CCC certificate issued by DOEACC prior to March 31, 2012 were entitled to be included in the select list but those who produced the said certificate after March 31, 2012 would not be eligible for appointment. The division bench held that such relaxation of the rule was impermissible, as there was no mention about the relaxation in the

advertisement, yet the relaxation granted by the Chairman/Managing Director of the Corporation was upheld. The result of the judgment of the division bench was that those, who did provide the said certificate in earlier relaxation got removed with new merit after adjustment. Hence, the matter was taken to Supreme Court by way of Special Leave Petition and the Supreme Court held in the background of these developments that any exercise of such power not traceable under the rules to provide for relaxation. While the Supreme Court accepted the principle laid down in **Bedanga Talukdar's case (supra)** upheld the relaxation granted by the Chairman/Managing Director to submit the certificate before March 28, 2012. Regarding further relaxation granted by the High Court, Supreme Court negated the relief granted by the High Court. In my considered view, in the present case, there is no relaxation as such granted by the Commission or even the State Government has passed the order after the intervention of this Court in the writ petition filed by contesting private respondent. Any requirement by the Commission to bring certificate, which is already there, after a candidate is given provisional selection, it cannot be said that the Commission exceeded its authority. Upon a pointed query being made, learned counsel appearing for the Commission very clearly stated that in such cases, the provisional selection is only accorded after the other requisite documents and the documents already filed are produced in original. This, according to learned counsel for the Commission, is a rule by practise. Thus, I do not see any illegality in the selection and appointment of the petitioner as Professor pursuant to the advertisement in question. In so far as challenge to the order dated 10.01.2022 passed by the Chief Secretary, Government of India, U.P., which gives the answer to the query of the Commission dated 27.11.2021 to the effect as to whether the experience of Professor would include the experience of Additional Professor as well, is concerned, I do not find any manifest error in the said order. Had it been a case of the petitioner that the Additional Professor did not take the postgraduate classes or the petitioner was not assigned postgraduate classes while he discharged duties as Additional Professor working on the said post, I do not find any good

ground to take view contrary to what has been answered by the Government in reply to the query made by the Commission. It is all a question that experience as a Professor, which is to be reckoned with for the post in question for which selection has been undertaken by the Commission, in my considered view the experience as an Additional Professor or as a Professor would count to experience of teaching postgraduate classes and the petitioner having requisite teaching experience as Professor and Additional Professor would, therefore, be entitled to the post. The question formulated thus stands answered in favour of Dr. Sheo Kumar.

30. Besides the above, I find that the Commission cancelled the order of appointment/selection of the petitioner by means of a very cryptic order passed on 10.08.2022 though it records that the petitioner did not possess the requisite qualifications but it failed to deliberate upon the various guidelines prescribed by the MCI, opinion expressed by Board of Governors dated 13.12.2018 and the decision taken by the State Government vide letters dated 10.01.2022 and 30.05.2022 clarifying the experience. It is interesting to notice that these two letters/notifications wherein reply to the queries were made by the competent authority but the Commission miserably failed to notice them. The order, therefore, cannot be sustained also for the reason that it did not contain any good ground to cancel the provisional selection.

31. In view of the above, Writ-A No.17887 of 2022 succeeds and is allowed. The order impugned dated 10.08.2022 is hereby quashed. Accordingly, Writ-A No.4236 of 2022 stands disposed of. The Commission is directed to make recommendations in favour of the petitioner Dr. Sheo Kumar for appointment on the post of Principal provided the other requisite formalities as may be required in law are completed by the petitioner. In the circumstances, writ petition filed by Dr. Jitendra Singh Kushwaha being Writ-A No.11798 of 2021 is hereby dismissed.

Date: 22.12.2023
Kuldeep