

The State Of Karnataka vs Anche Narayana Rao Dattatri on 21 March, 2024

-1-

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 21ST DAY OF MARCH, 2024
PRESENT

THE HON'BLE MR JUSTICE M.I.ARUN
AND
THE HON'BLE MR JUSTICE UMESH M ADIGA
WRIT APPEAL NO. 100075 OF 2024 (S-RES)
C/W

WRIT APPEAL NO. 100077 OF 2024
WRIT APPEAL NO. 100073 OF 2024
WRIT APPEAL NO. 100074 OF 2024
WRIT APPEAL NO. 100076 OF 2024

IN WRIT APPEAL NO. 100075 OF 2024
BETWEEN:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF MEDICAL EDUCATION
M S BUILDING, BENGALURU-560001.

VISHAL
NINGAPPA
PATTIHAL
Location: HIGH COURT
OF KARNATAKA

2. THE DIRECTOR

DEPARTMENT OF MEDICAL EDUCATION

DHARWAD BENCH
Date: 2024.04.04
10:29:46 +0530

BENGALURU-560001.

...APPELLANTS

(BY SRI. SHASHIKIRAN SHETTY, AG FOR
SRI. GANGADHAR J M., AAG AND SRI. V.S. KALASURAMATH, HCGP)

AND:

1. DR GURUSHANTAPPA YALAGANCHIN
S/O HALAPPA YALAGANCHIN
AGE 58 YEARS, FORMER PROFESSOR AND HOD
DEPARTMENT OF GENERAL SURGERY
KIMS, HUBBALLI-580001.

-2-

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

2. KARNATAKA INSTITUTE OF MEDICAL SCIENCE
HUBBALLI, DHARWAD DISTRICT-580001
REPRESENTED BY ITS DIRECTOR.
3. DR ISWAR HOSAMANI, PROFESSOR
DEPARTMENT OF GENERAL SURGERY
KIMS HUBBALLI-580001.

...RESPONDENTS

(BY SRI. SUNIL DESAI, ADVOCATE FOR R1,
SRI. SUBRAMANYA JOIS, SENIOR ADVOCATE,
SRI. M Y DESHPANDE, ADVOCATE FOR R2,
SR. P S RAJAGOPAL, SENIOR ADVOCATE FOR
SRI. K.L. PATIL, ADVOCATE FOR R3)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH
COURT ACT, 1961, PRAYING TO, SET ASIDE THE COMMON
JUDGMENT DATED. 23.02.2024 (S-RES) PASSED BY A LEARNED
SINGLE JUDGE OF THIS HON'BLE COURT IN W.P NOS. 100726 AND
DISMISS THE WRIT PETITIONS FILED BY THE PETITIONERS.

IN WRIT APPEAL NO. 100077 OF 2024
BETWEEN

THE STATE OF KARNATAKA
R/BY TIS PRINCIPAL SECRETARY, (MEDICAL EDUCATION)
DEPARTMENT OF HEALTH & FAMILY WELFARE,
NO. 610, 6TH FLOOR, 4TH GATE,
M S BUILDING, BANGALORE-560001.

...APPELLANT

(BY SRI. SHASHIKIRAN SHETTY, AG FOR
SRI. GANGADHAR J M., AAG AND SRI. V.S. KALASURAMATH, HCGP)
AND

1. DR. ANCHE NARAYANA RAO DATTATRI
AGED ABOUT 54 YEARS,
DEPARTMENT OF PHARMACOLOGY
KARNATAKA INSTITUTE OF MEDICAL SCIENCE
HUBBALLI DHARWAD DIST-580021.

-3-

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,

WA No. 100076 of 2024,

2. KARNATAKA INSTITUTE OF MEDICAL
SCIENCE, HUBBALI
DHARWAD DISTRICT-580021
REPRESENTED BY ITS DIRECTOR.
3. DR JANKI TORVI
AGE 52 YEARS, PROFESSOR,
DEPARTMENT OF PHARMACOLOGY
KIMS, HUBBALI-580021.

...RESPONDENTS

(BY SRI. UDAY HOLLA, SENIOR ADVOCATE FOR
SRI. VISHWANATH HEGDE, ADVOCATE FOR C/R1,
SRI. SUBRAMANYA JOIS, SENIOR ADVOCATE,
SRI. M Y DESHPANDE, ADVOCATE FOR R2,
SR. P S RAJAGOPAL, SENIOR ADVOCATE FOR
SRI. K.L. PATIL, ADVOCATE FOR R3)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH
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JUDGMENT DATED. 23.02.2024 (S-RES) PASSED BY A LEARNED
SINGLE JUDGE OF THIS HON'BLE COURT IN W.P. NOS. 100725/2024
AND DISMISS THE WRIT PETITION FILED BY THE PETITIONERS.

IN WRIT APPEAL NO. 100073 OF 2024
BETWEEN:

DR. ISHWAR HOSMANI
AGE. 57 YEARS, OCC. PROFESSOR,
DEPARTMENT OF GENERAL SURGERY,
KIMS, HUBBALLI 580001.

...APPELLANT

(BY SRI. P S RAJAGOPAL, SENIOR ADVOCATE FOR
SRI. K L PATIL, ADVOCATE)

AND:

1. DR. GURUSHANTAPPA YALAGANCHIN
S/O HALAPPA YALAGANCHIN
AGE 58 YEARS, OCC. PROFFESOR AND HOD,
DEPARTMENT IF GENERAL SURGERY,
KIMS, HUBBALLI 580001.

-4-

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

2. THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY,

DEPARTMENT OF MEDICAL EDUCATION,
M S BUILDING,, BENGALURU 560001.

3. THE DIRECTOR
KARNATAKA INSTITUTE OF MEDICAL SCIENCE (KIMS),
HUBBALLI, DHARWAD 580021.
4. KARNATAKA INSTITUTE OF MEDICAL SCIENCE
HUBBLI, R/BY ITS DIRECTOR,
DIST. DHARWAD 580001.

...RESPONDENTS

(BY SRI. SHASHIKIRAN SHETTY, AG FOR
SRI. GANGADHAR J M., AAG AND
SRI. V.S. KALASURAMATH, HCGP FOR R2,
SRI. SUNIL DESAI, ADVOCATE FOR C/R1,
SRI. SUBRAMANYA JOIS, SENIOR ADVOCATE,
SRI. M Y DESHPANDE, ADVOCATE FOR R3 & R4)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH
COURT ACT, 1961, PRAYING TO, SET ASIDE AND REVERSE THE
COMMON FINAL ORDER DATED 23.02.2024 IN WP NO.100726/2024
(S-RES) AND THUS ALLOW THIS APPEAL THEREBY DISMISSING THE
WRIT PETITION BY THE PETITIONER WITH EXEMPLARY COSTS &
ETC.,

IN WRIT APPEAL NO. 100074 OF 2024
BETWEEN

DR. JANAKI R TORVI
AGE. 52 YEARS, OCC. PROFESSOR,
DEPT OF PHARMACOLOGY,
KIMS, HUBBALLI, DIST. DHARWAD 580021.

...APPELLANT

(BY SRI. P S RAJAGOPAL, SENIOR ADVOCATE FOR
SRI. K L PATIL, ADVOCATE)

-5-

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

AND

1. DR. ANCHE NARAYANARAO DATTATRI
AGE. 54 YEARS, OCC. PROFESSOR AND HOD,
DEPT OF PHARMACOLOGY KIMS,
HUBBALLI, DHARWAD 580021.

2. THE STATE OF KARNATAKA
R/BY ITS PRINCIPAL SECRETARY, (MEDICAL EDUCATION),
DEPT. OF HEALTH AND FAMILY WELFARE,
NO.610, 6TH FLOOR, 4TH GATE,
M S BUILDING, BENGALURU 560001.
3. THE DIRECTOR
KARNATAKA INSTITUTE OF MEDICAL SCIENCE (KIMS)
HUBBALLI, DHARWAD 580021.

...RESPONDENTS

(BY SRI. SHASHIKIRAN SHETTY, AG FOR
SRI. GANGADHAR J M., AAG AND
SRI. V.S. KALASURAMATH, HCGP FOR R2,
SRI. UDAY HOLLA, SENIOR ADVOCATE FOR
SRI. VISHWANATH HEGDE, ADVOCATE FOR C/R1,
SRI. SUBRAMANYA JOIS, SENIOR ADVOCATE,
SRI. M Y DESHPANDE, ADVOCATE FOR R3)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH
COURT ACT, 1961, PRAYING TO, SET-ASIDE AND REVERSE THE
COMMON FINAL ORDER DATED 23.02.2024 IN WP NO.100725/2024
(S-RES) AND THUS ALLOW THIS APPEAL THEREBY DISMISSING THE
WRIT PETITION BY THE PETITIONER WITH EXEMPLARY COSTS &
ETC.,

IN WRIT APPEAL NO. 100076 OF 2024
BETWEEN

1. KARNATAKA INSTITUTE OF MEDICAL
SCIENCE, HUBBALLI
DHARWAD DISTRICT 580001,
REPRESENTED BY ITS DIRECTOR.

-6-

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

2. THE DIRECTOR
KARNATAKA INSTITUTE OF MEDICAL SCIENCE,
HUBBALLI, DHARWAD DISTRICT 580001.

...APPELLANTS

(BY SRI. SUBRAMANYA JOIS, SENIOR ADVOCATE
SRI. M Y DESHPANDE, ADVOCATE)

AND

1. DR. GURUSHANTAPPA YALAGANCHIN

S/O HALAPPA YALAGANCHIN
AGED ABOUT 58 YEARS,
FORMER PROFESSOR AND HOD,
DEPARTMENT OF GENERAL SURGERY ,
KIMS, HUBBALLI 580001.

2. THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF MEDICAL EDUCATION,
M S BUILDING, BANGALORE 560001.
3. THE DIRECTOR
DEPARTMENT OF MEDICAL EDUCATION,
BANGALORE 560001.
4. DR. ISHWAR HOSAMANI, PROFESSOR,
DEPARTMENT OF GENERAL SURGERY,
KIMS, HUBBALLI 580001.
5. DR. ANCHE NARAYANA RAO DATTATRI
AGE. 54 YEARS,
OCC. PROFESSOR AND HEAD,
DEPARTMENT OF PHARMACOLOGY,
KIMS HUBBALLI 580001.

- 7 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
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6. DR. JANAKI R TORVI
AGE. 52 YEARS, OCC. PROFESSOR,
DEPARTMENT OF PHARMACOLOGY,
KIMS, HUBBALLI 580001.

...RESPONDENTS

(BY SRI. P S RAJAGOPAL, SENIOR ADVOCATE FOR
SRI. K L PATIL, ADVOCATE FOR R6,
SRI. UDAY HOLLA, SENIOR ADVOCATE FOR
SRI. VISHWANATH HEGDE, ADVOCATE FOR R5,
SRI. SHASHIKIRAN SHETTY, AG FOR
SRI. GANGADHAR J M, AAG AND
SRI. V.S. KALASURAMATH, HCGP FOR R2 & R3,
SRI. SUNIL DESAI, ADVOCATE FOR R4)

THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH

COURT ACT, 1961, PRAYING TO, SET-ASIDE AND REVERSE THE
COMMON FINAL ORDER DATED 23.02.2024 RENDERED BY THE
LEARNED SINGLE JUDGE, IN W.P.NOS. 100726/2024 AND
100725/2024 (S-RES) AND THUS ALLOW THIS APPEAL THEREBY
DISMISSING THE SAID WRIT PETITIONS.

THESE APPEALS, COMING ON FOR ORDERS, THIS DAY,
M.I.ARUN, J., DELIVERED THE FOLLOWING:

-8-

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

COMMON JUDGMENT

Aggrieved by the order passed in W.P.No.100726/2024
clubbed with W.P.No.100725/2024, the present writ appeals
have been filed by the respondents therein.

2. For the sake of convenience, the parties are
referred to as per their status in the writ petitions.

3. The petitioner in W.P.No.100725/2024 is the Head
of Department of Pharmacology and the petitioner in
W.P.No.100726/2024 is the Head of Department of General
Surgery at Kasturba Institute of Medical Sciences, Hubballi
(hereinafter referred to as 'KIMS'). Both the petitioners were
sought to be removed from the post of Head of Department
and some other persons who have served as Professors in the

same Department were sought to be appointed as the Head of Department. Aggrieved by the same, the petitioners preferred the writ petitions.

4. The case of the petitioners is that they are the senior most Professors in their respective Departments and hence they were rightly appointed as the Head of Department

-9-

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

of the said Departments. It is contended that they are now sought to be replaced by another Professor, who is junior to them.

5. Learned Single Judge on the ground that the Regulation 3.10 of the Teachers Eligibility Qualification in Medical Institutions Regulations, 2022 (hereinafter referred to as the 'Regulations') framed under the National Medical Commission Act, 2019 (hereinafter referred to as 'the Act') mandates that appointments to the administrative posts in Government Institutions including the in-charge arrangements, amongst eligible candidates, shall be on inter se vertical seniority based on the date of entry into the Institutions/Service and that Byelaw of the KIMS violates the said provision, allowed the writ petition and ordered that the petitioners be continued as Head of Department of their respective Departments. Aggrieved by the same, the present

writ appeals are filed by the respondents therein.

6. The case of the respondents is that the National Medical Commission Act, 2019 pertains to the manner in which

- 10 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

medical education has to be imparted in various Medical Colleges across the country and it also stipulates the manner in which the faculty should be appointed. It is further submitted that Section 57 of the Act provides for making regulations and in exercise of its power, the Government of India has framed Teachers Eligibility Qualification in Medical Institutions, 2022 and it distinguishes the post of Head of Department and administrative posts and Clause 3.9 is concerned with the Head of Departments and Clause 3.10 is concerned with administrative posts and that only in case of administrative posts, inter se vertical seniority is required to be considered and the same is not required to be considered in the case of Head of Departments and on that ground it is submitted that the decision in Writ Petitions is erroneous and it is prayed that the same be set aside.

7. Section 2(i) of the Act defines "Medical Institution" as follows:

"(i) "medical institution" means any institution within or outside India which grants degrees, diplomas or

licences in medicine and include affiliated colleges and deemed to be Universities;"

- 11 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

8. Section 57 of the Act empowers the Commission to make regulations under the Act.

9. It is not in dispute that the Teachers Eligibility Qualification in Medical Institutions Regulations, 2022 has been framed under Section 57 of the National Medical Commission Act, 2019.

10. Regulation 2 reads as follows:

2. Objectives

Appointment and promotion of faculty in various teaching specialties imparting graduate and postgraduate medical education in medical institutions, falling within the purview of the National Medical Commission, has to be in accordance with the minimum qualifications and experience prescribed in these Regulations, so as to maintain a standard of teaching in medical institutions.

11. Regulation 3 deals with General Norms for Appointment of Faculty in Medical Institutions.

12. Regulations 3.6, 3.7, 3.9 and 3.10 read as under:

3.6 The position of Dean/Director/Principal of Medical College/Institution should be held by a person possessing recognized postgraduate medical degree from a recognized institution with a minimum of ten years teaching experience as Professor/Associate Professor in a

- 12 -

NC: 2024:KHC-D:5604-DB

WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

Medical College/Institution. Out of which at least five years should be as Professor in the Department. Appointment to these posts shall be made on seniority-cum-merit basis. The Dean/Director/Principal of Medical Institution shall not hold the post of Head of the Department.

3.7 The Medical Superintendent of the affiliated teaching hospital shall possess a recognized postgraduate medical degree from a recognized Institution with a minimum of ten years teaching experience as Professor /Associate Professor in the relevant departments of the Hospital, out of which at least five years should be as Professor. Appointment to these posts shall be made on seniority-cum-merit basis. Medical Superintendent shall not occupy the position of the Head of the Department. However, he can head the unit.

3.8 The position of Dean/Director/Principal of Standalone Postgraduate Broad Specialty/Super Specialty Institution shall be held by a person possessing recognized postgraduate Degree from a recognized Institution with minimum of ten years teaching experience as Professor/Associate Professor, out of which, at least five years should be as Professor.

3.9 The Heads of the Departments of broad and super specialty courses shall possess a recognized Postgraduate broad specialty and super specialty degree, as the case may be, in the concerned specialty. This mandatory requirement is relaxed for five more years from the date of notification of this Regulation to all the Broad and Super Specialty courses which were started after 01 January, 2009.

3.10 Appointments to the administrative posts in Government Institutions including the in-charge arrangements, amongst eligible candidates, shall be on

- 13 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

inter se vertical seniority based on date of entry into the Institution/Government Service.

13. KIMS is a Society registered under the Karnataka Societies Registration Act, 1960 and it has its own Byelaws.

14. Byelaw 2 Clause (o) reads as under:

(o) "Post-Graduate Medical Education Board" means the Board constituted under section 16;

15. The job chart of KIMS in respect of Head of the Department/Professor reads as under:

HEAD OF THE DEPARTMENT/PROFESSOR

In addition to duties of his post he has to do the following duties as HOD:

1. Setting up high standard of professional conduct in the department.
2. Planning the teaching schedule in consultation with other staff in the department.
3. Planning practical training to U.G and P.G. along with ward assignment.
4. Planning clinical teaching programmes / with Intra and Inter departmental co-ordination.

- 14 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

5. Organization of Seminars, Panel Discussions, Symposia, debates, journal clubs and other learning activities.

6. Display of Circulars and Educational materials in Notice Boards.

7. Carrying out teaching work with assistance from members

of staff.

8. Conduct of Internal Assessment/Tests / Compilation of marks and dispatch to Principal / University.
9. Guidance to students in methods of study and use of reference books and library.
10. Guiding P.G's and their Dissertation Work.
11. Taking part in college council meeting.
12. Conduct of U.G/P.G. Exams.
13. Supervise Admission and discharge of patients.
14. Supervise Out patient work
15. Supervision of maintenance of ward cleanliness, patient's records. X-Ray and other documents.
16. Action for Up keeping and timely repairs of equipments.
17. Action for Indent for drugs, surgical supplies and equipments necessary for the department.
18. Supervise and Maintenance of stock Registers and inventories.

- 15 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

19. Co-ordinating and facilitating work of their staff members.
20. Investigation of complaints and suitable remedial measures.
21. Formulation of short term and long term plans for growth and developments of the department.
22. Any other work entrusted by superintendent, Director cum Dean.
23. Supervise Compilation and maintenance of statistics of department.
24. Submission of C.R. of sub-ordinate teaching and non teaching staff to higher officer.

25. Sanction of CL to sub-ordinate staff.
26. Official correspondence.
27. Supervision of pre-operative operation and post-operative care of the patients.
28. Establishment and maintenance of departmental library/Museum and Seminar room.
29. Maintenance of Movement register of the dept. staff.
30. In addition to the duties enumerated above he is responsible for assigning special work related to his department as he feels fit to his sub-ordinates.
31. Deputing Teaching Staff as per protocol during VIP and WVIP visits.

- 16 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

32. OPD Attendance: On these days working will be from 9 am to 9 am next day.

Duty to be assigned to his sub-ordinates to perform emergence surgery, In case Asst. Professor wants opinion of Chief, he should be available for 2nd opinion and also in case of difficult surgery if need arise to takes over the surgical procedure. On operation day he is responsible to keep sub-ordinate to be on duty of smooth functioning of the Department.

Special duties in each Department - Head of the Department can entrust to any of the staff.

Anatomy:

- Receiving cadaver
- Embalming and other procedures
- Maintenance of tanks
- Establishment and maintenance of Museum
- P.G. Teaching for Orthopedics/ENT Departments.

- Body Donation Society, KIMS Hubli

Physiology:

Mammalian Physiology-lab to be equipped not only for teaching purposes but also extend services to the patients referred from hospitals.

- 17 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

Biochemistry:

Maintain the standards of the investigative procedure.

Able to cater to the needs of the demand.

If possible, emergency lab services.

Pharmacology:

-Supervise and Maintenance of Central Animal house

-Clinical Pharmacy - establishment -Drug auditing

Pathology:

-Equipped to cater to the needs of the hospital.

-Emergency services, if possible, to be provided.

-Clinical autopsy of interesting cases as per request of other clinical Dept. HOD's

Microbiology:

-AIDS Surveillance

-Raise to the occasion during localized focal outbreaks / epidemics

-Other communicable diseases identification.

P & S. Medicine:

-Involvement in Public Health Problems

- a) Data collection, epidemiological survey
- b) Preventive aspects (strategies) - Immunization vaccination
- c) Management strategies - Not only in institutions but society at large.
- d) Health Education + Treatment.

- 18 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

Forensic Medicine:

1. Medico-legal autopsy to be attended by staff of the department when they are on duty as and when requisition for P.M. examination is received either by Police or Magistrate.
2. To attend to all clarifications sought by the police or magistrate in consultation with HOD of the dept.
3. To issue medico legal document attended by the staff to concerned police or Magistrate within 24 hours after attending the case.
4. To attend the course whenever summons are issued to give evidence in respective courts.

Radio Diagnosis:

1. To attend to any Medico-legal cases such as age estimation, examination of sexual offences cases, examination of skeletal remains, examination of autopsy etc. whenever referred by police.

16. Byelaw 20 reads as under:

20. Rotation of Head of Department:

In the Department where there are more than one Professor, the HOD shall be rotated among them. Each Professor serving as a head for a period of three years or superannuation whichever is earlier and so in the order of seniority or as notified by Government from time to time.

The EPAR of all HOD's current and preceding shall be reviewed by the Director / Director Cum Dean of the

- 19 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

Institute in case of medical college and by the Director in case of super specialty hospitals respectively.

The Director / Director cum Dean and CAO shall ensure due diligence for seniority in the implementation of the same in their respective institute.

Provided for serving as HOD there is no vigilance or departmental enquiry / criminal case is pending against the concerned staff.

17. Reading of the aforementioned Regulations and the Byelaws show that the Head of Department of a course is necessarily a Professor and part of the teaching faculty and the administrative work assigned to him is only incidental to the main teaching work that he has to perform.

18. A bare reading of the Regulation shows that the Regulations have differentiated between the position of a Dean/Director/Principal of a Medical College or Medical Superintendent; Heads of Departments and administrative posts. Merely because the post of a Dean/Director/Principal or a Medical Superintendent or the Head of Department also includes discharge of administrative functions, the said post cannot be considered as an administrative post. Appointment as Head of Department is governed by Regulation 3.9 and

- 20 -

NC: 2024:KHC-D:5604-DB

WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

appointment to administrative post is governed by Regulation

3.10. It is possible that in modern day Medical College or Hospital, there are various administrative posts which are held by persons other than doctors.

19. The Learned Single Judge while delivering the impugned judgment has considered the post of Head of Department as an administrative post and as an administrative post as per Regulation 3.10 requires appointment to be made based on inter se vertical seniority, has concluded that the Byelaw of KIMS is in conflict with the Regulation and in such an eventuality, the Regulation should prevail. This, in our considered view, is erroneous. The Regulation as stated above, distinguishes between the post of Head of Departments and administrative posts and there is no stipulation in the Regulation that the Head of Department should necessarily be the senior most Professor in the Department.

20. True, normally it is considered that if a person is made to work under his junior, his morale goes down and it may not be in the interest of the Institution to appoint a junior

- 21 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

person above his senior. The petitioners, in this regard, in the course of the arguments, have relied upon the decisions of the High Court of Jarkhand in W.P.No.265/2022 wherein paragraph 25, it has been held as under:

25. After hearing counsel for the parties and from perusal of the documents brought on record, this Court is of the view that case of the petitioners need considerations for the following facts and reasons.

- (i) Admittedly the Associate Professors have been made Head of the Department which is against the eligibility criteria and the requirements as they are not working in the rank of Professors. From the Medical Council of India Amendment Notification dated 9th March, 2017, it is evident that there is clear direction that "Each department shall have a Head of the Department of the rank of Professor except in the departments of Dermatology, Venereology and Leprosy, Psychiatry and Dentistry where Associate Professor may be the Head of the Department who shall have overall control of the Department". The aforesaid contention has the force of law.
- (ii) It has been held by the Hon'ble Apex Court in clear language that the Medical Council of India Amendment Notification is mandatory and not directory.
- (iii) In the case of MCI Vs. State of Karnataka reported in MANU/SC/0424/1998 : (1998) 6 SCC 131, the Hon'ble

- 22 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

Supreme Court, while holding that the Regulations of the MCI are binding and mandatory, has further held that all State enactments, rules and regulations framed by the Universities etc. in relation to the conduct of the medicine courses, to the extent they are inconsistent with the Act and the Regulations made thereunder by the MCI, are repugnant by virtue of Article 254 of the Constitution of India inasmuch as the Act is relatable to Entry 66 List 1 Schedule VII of

- (iv) The aforesaid view has been reaffirmed by the Constitution Bench of the Hon'ble Supreme Court in the case of Preeti Srivastava (Dr.) Vs. State of M.P. & Others reported in MANU/SC/1021/1999 : (1999) 7 SCC 120. In para-57 of the said Judgment, the Hon'ble Court has held as under

"57. In the case of Medical Council of India v. State of Karnataka [MANU/SC/0424/1998 : (1998) 6 SCC 131] a Bench of three Judges of this Court has distinguished the observations made in Nivedita Jain [MANU/SC/0093/1981 : (1981) 4 SCC 296] . It has also disagreed with Ajay Kumar Singh v. State of Bihar [MANU/SC/0727/1994 : (1994) 4 SCC 401] and has come to the conclusion that the Medical Council regulations have a statutory force and are mandatory. The Court was concerned with admissions to the MBBS course and the regulations

- 23 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

framed by the Indian Medical Council relating to admission to the MBBS course. The Court took note of the observations in State of Kerala v. T.P. Roshana [MANU/SC/0051/1979 : (1979) 1 SCC 572, 580] (SCC at p. 580) to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act an overall vigilance by the Medical Council to prevent substandard entrance qualifications for medical courses. These observations would apply equally to postgraduate medical courses. We are in respectful agreement with this reasoning."

- (v) The Hon'ble Supreme Court of India through its various pronouncements has held that the Regulations framed by the MCI are statutory in character and,

therefore, binding and mandatory on all concerned Universities and Colleges conducting medicine courses. The Governing Council of RIMS has no legal competence to dilute the requirements laid down by the MCI in its Notification. They cannot prescribe lower qualification for the post of administrative head, that too for a post which will have an overall control over the entire Department.

- 24 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

- (vi) Further, the Hon'ble Apex Court in the case of Maharashtra University of Health Sciences v. Paryani Mukesh Jawaharlal, reported in(MANU/SC/2510/2007: (2007) 10 SCC 201, has held in para-15 as under:

"15. MCI has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. The regulations framed by the MCI with the previous sanction of the Central Government, in regard to any of the matters referred to in Section 33 of the Indian Medical Council Act, 1956, will have statutory force and are mandatory. Universities must necessarily be guided by the MCI Regulations. Any regulations made by the Universities which are inconsistent with the MCI Regulations, or which dilute the criteria laid down by MCI will not be valid to the extent of inconsistency or dilution. (Vide State of T.N. v. Adhiyaman Educational & Research Institute [MANU/SC/0709/1995 : (1995) 4 SCC 104] , Medical Council of India v. State of Karnataka [MANU/SC/0424/1998 : (1998) 6 SCC 131] and Preeti Srivastava (Dr.) v. State of M.P. [MANU/SC/1021/1999 : (1999) 7 SCC 120]) It, therefore, follows that if Clauses 56(2) and 57 of amended University Ordinance 1 of 2002 are inconsistent with MCI Regulation 12(4), they will be void to the extent of inconsistency. On the

- 25 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,

other hand, if the said Clauses merely implement, or make explicit what is implicit in MCI Regulation 12(4), then they will be valid and binding."

- (vii) The Clause 3.10 of the Gazette notification dated 22.02.2022 i.e. Teachers Eligibility Qualifications in Medical Institutions Regulations, 2022 reads as under:

"Appointment to the administrative post in Government Institutions including the in-charge arrangements, amongst eligible candidates, shall be on inter-se vertical seniority based on date of entry into the Institution/ Government service."

This provision nullifies the rotation policy as floated by the Governing Body of the RIMS.

- (viii) From the Medical Commission Notification dated 28 October, 2020 in the head of Staff Requirements, it has been clearly head as under:

"2. Each department shall have a Head of the Department of the rank of full time Professor who shall have overall control of the Department except in the departments of Dermatology, Psychiatry and Dentistry where Associate Professor may be the Head of the Department who shall have overall control of the Department."

So, it can comfortably be inferred that the Head of the Department shall be in the rank of a Full Time Professor save and except the Departments mentioned aforesaid.

- 26 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

- (ix) The office order dated 04.03.2021 (Annexure-4 to the writ petition), issued under the signature of Director, RIMS, clarifies that even in AIIMS New Delhi, there is no practice to make Assistant Professor as Head of the Department.

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It appears that RIMS has rectified its error and now in the garb of decision of the Governing Body, they are taking a "U Turn" that it is not binding upon them.

- (x) RIMS being an Autonomous Body is bound by the MCI Rules as also the Regulations of the AIMS. If at all RIMS wants to deviate from the aforesaid guidelines of MCI and that of the AIMS, they can do so by going to a higher standards and not to the lower standard, as has been held in the case of Preeti Srivastava (Dr.)(Supra). This Court is tempted to quote Clause 17 of the Notification dated 8th September, 2014 published in Jharkhand Gazette (Extraordinary), dated 22nd September, 2014, which reads as under:

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- 27 -

NC: 2024:KHC-D:5604-DB
 WA No. 100075 of 2024
 C/W WA No. 100077 of 2024
 WA No. 100073 of 2024,
 WA No. 100074 of 2024,
 WA No. 100076 of 2024,

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- (xi) From the pleadings and the arguments advanced by counsel for the parties, it is an admitted position by RIMS that the private respondents are not holding the rank of Professor through they are getting the pay scale of the Professor.
- (xii) The petitioners are the senior most Professors of their respective Departments. As per service credentials, the petitioners are the senior most in their respective Departments and have continued to work since long but by the impugned office order, they have been forced to work under their juniors. The respondent nos. 3 to 6 don't even hold the substantive post of Professor and, therefore, in view of MCI Notification

dated 09.03.2017, are ineligible to be placed as the Head of the Departments.

- (xiii) The private respondents are not being holder of substantive post of Professor, do not even compete with the petitioners and are outside the zone of consideration for the post of Head of the Department. The respondent no. 3 is Associate Professor in the Department of Cardiology with effect from 2016 and till date has not been promoted to the substantive post of Professor. The respondent no. 4 is the Associate Professor in the Department of microbiology with effect from 2016 and till date, he has not been

- 28 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

promoted to the substantive post of Professor. The respondent no. 5 has got promotion to the post of Associate Professor in the Department of Pediatric Surgery with effect from 05.02.2020 and till date, he has also not got promotion to the substantive post of Professor. The respondent no. 6 has also got promotion to the post of Associate Professor in the Department of Radiology on 01.07.2016 and till date, he has not even been promoted to the substantive post of Professor.

- (xiv) Even assuming that the Governing Council of RIMS has the power as per Section 12 of the RIMS Regulation to take a decision in administrative matters but simultaneously it is the settled principles of law that if the decision at the face of it is illegal and arbitrary, dehors the rules, the High Court can exercise its power of judicial review. Normally the High Court never interferes in the policy decision of the State or the autonomous bodies but here in the instant case, since the Governing Body has taken a decision contrary to the Regulations of Medical Council of India, which is mandatory, the Court has no other options than to interfere in the matter. The arguments advanced by learned counsel for the RIMS that the final order has not been passed, is not accepted to this Court since final order has been merged with Annexure-5 and also in view of the fact that the same has not been communicated to the petitioner.

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

Thus the above issues framed are answered accordingly."

21. Further, they have also relied upon a decision of the High Court of Allahabad in Sabhajit Mishra and Ors. Vs. State of U.P. and Ors.1 in paragraph 12 it has been held as under:

"12. Coming to the last question, it is not disputed that as Head of Department, the senior most teacher exercises administrative control over all other teachers and staff in the Department and is also a competent authority in respect to day to day affairs of the Department. Though no higher pay scale is provided to a person appointed as Head of Department and by itself, it is not a sanctioned post as such, but it cannot be doubted that it confers a higher status on the incumbent with the authority and power to exercise administrative control over teachers and non-teaching staff of the Department concerned. He also exercises certain financial and other powers which are required to be looked after by the Head of Department. It would be against the normal hierarchical system, in an establishment where a junior person would be allowed to exercise administrative control over seniors. It is not only derogatory to seniors but otherwise would also infuse a lot of heartburning, disgust and frustration amongst seniors. Conferment of a higher status on a person even on rotational basis, irrespective of seniority, especially when it carries conferment of higher

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MANU/UP/1579/2007

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

administrative power cannot be said to be innocuous and not affecting the rights and interests of other teachers.

Technically speaking, conferment of headship of a Department by itself cannot be said to be a promotion but it has all traits and factors akin to promotion conferred upon a person who is given such an assignment of higher status. The Apex Court has ruled that in the matter of comparison of the posts, equivalence in status is also a matter of great importance and ignoring the person's seniority, a junior person cannot be placed on a higher status inasmuch as, such an act would be clearly arbitrary and discriminatory. The respondents have not shown any reason justifying the decision that headship of the Departments in the University should be conferred on rotational basis and that would not affect the senior teachers adversely in any manner. Importance of matter of status can be realized from the fact that when a Principal of a recognized institution was sought to be transferred as Reader of the University which is a post in the same pay scale, the Apex Court in Vice Chancellor, Lalit Narain Mithila University v. Dayanand Jha MANU/SC/0427/1986 : AIR1986SC1200, declared such order to be illegal, observing that "The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts. Although the two posts of Principal and Reader are carried on the same scale of pay, the post of Principal undoubtedly has higher duties and responsibilities...."

- 31 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

22. The aforesaid contention of the petitioners is countered by respondents by submitting that a rotation policy has been adopted by the KIMS in order to promote diversity of thought, new innovations, which various Professors in the same department may have. It is submitted that giving an opportunity for various Professors will only help in improving existing system. It is further submitted that Head of the Department is not a promotion for the Professors but he is only a first amongst equals, similar to a captain of a team and that

other Professors are not inferiors and Head of Department does not get any added salary.

23. When the statute does not specifically state that the senior most person should be appointed as the Head of Department, under the circumstances, it is a discretion best left to the Institution to determine the manner of choosing the Head of Department rather than Courts substitute the wisdom of the Institutions and stating which is the appropriate manner. The Court in exercise of its writ jurisdiction has to consider whether the action of the State or its authorities is arbitrary, unreasonable or whimsical or discriminating. It may not be

- 32 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

appropriate to judge whether the decision is sound or some other decision could have been better. In the instant case, the concerned statute does not prohibit appointment of Head of Department on rotational basis. The Byelaws of KIMS stipulate that the same shall be appointed on a rotational basis. As stated above, we do not find the said condition to be against any statute. The learned Single Judge in the impugned order has not held the said Regulation to be invalid. Based on the experience gained, Byelaws of KIMS have been prepared and the institution has deemed it appropriate in its own interest that the Head of Department should be on a rotational basis.

We do not find any error in the said Byelaw.

24. The judgment of Jarkhand High Court is not applicable to the present case, as in the said case the aspect of Associate Professors being appointed in the place of Professors was dealt with. Further for the reasons assigned above, we are not in agreement with the judgment of the High Court of Allahabad.

- 33 -

NC: 2024:KHC-D:5604-DB
WA No. 100075 of 2024
C/W WA No. 100077 of 2024
WA No. 100073 of 2024,
WA No. 100074 of 2024,
WA No. 100076 of 2024,

25. Hence, we deem it appropriate to set aside the impugned order passed in W.P.Nos.100726/2024 and 100725/2024.

26. Hence, the following:

ORDER

(i) Writ Appeals are allowed.

(ii) The impugned order dated 23.02.2024 passed by the learned Single Judge in W.P.No.100726/2024 and W.P.No.100725/2024 is hereby set aside.

(iii) W.P.No.100726/2024 and W.P.No.100725/2024 are hereby dismissed.

Sd/-

JUDGE Sd/-

JUDGE NAA