

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

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CIVIL APPEAL NO 3520 OF 2001

(Arising out of SLP(C) No.9631/1999)

Kidwai Memorial Institute of Onchology & Anr. Appellant (s)

Versus

State of Karnataka & Ors Respondent(s)

With

Civil Appeal No.3521 of 2001
(Arising out of SLP(C) No.11160/1999)

ORDER

Leave granted.

These two appeals, one by the Kidwai Memorial Institute of Onchology and the other by Dr.Vijaykumar are directed against one and the same order of the High Court of Karnataka. The dispute relates to the appointment to the post of Assistant Professor in Surgery. Dr.Vijaykumar having been selected for the post and on being appointed, Dr.Rajan who was also one of the applicants, filed a writ petition contending therein that the diploma which Dr.Vijaykumar possesses cannot be held to be equivalent to the Post Graduate Degree of Master in Surgery and as such he was not eligible to be appointed. It appears that another contention had been raised in the writ petition, namely, both the posts of Assistant Professor in Surgery were meant for reserved category candidates and therefore a general category candidate like Dr.Vijaykumar could not have been appointed. The High Court appears to have not examined the second ground of attack. The learned Single Judge as well as the Division Bench in appeal were persuaded to accept the contention of the writ-petitioner and held that the qualification of Diplomat of National Board which Dr.Vijaykumar possesses cannot be held to be equivalent to a Post Graduate Degree in Surgery and with this conclusion the appointment made having been annulled, these two appeals have been preferred.

The only ground on which the High Court has set aside the appointment of Dr.Vijaykumar being that he does not possess the

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requisite qualification for being appointed the only consideration for this Court is as to whether that conclusion of the High Court is in accordance with law or is erroneous. When the matter had been listed in this Court for admission, since a question of equivalence of a specialized degree was the subject matter of consideration, it was thought appropriate that notice should be given to the Indian Medical Council has entered appearance and has filed an affidavit unequivocally indicating that the Diplomat of National Board has been held to be equivalent to a Master Degree and only for the purposes of appointment to a teaching post as Assistant Professor in any Medical College what is required is an additional/teaching/research experience of one year. In this Court Mr. Javali appearing for Dr. Vijaykumar took us through several documents which appear to be the resolution of the Indian Medical Council and also the relevant documents issued from the Government of India in the Ministry of Health and on going through those documents which we do not think it necessary to elaborate, we have no manner of doubt that the Indian Medical Council has already held the Diplomat of National Board to be equivalent to a Master's Degree in the Discipline and for the purpose of holding a teaching post, a person having the equivalent of DNB is required to have the experience of one year. Having regard to the experience which Dr. Vijaykumar has in the different post of Resident Surgeon, Clinical Tutor/Demonstrator we are also of the considered opinion that he did possess the requisite teaching experience. Since the qualification of Diplomat of National Board acquired by Dr. Vijaykumar is equivalent to a Post Graduate Degree in Surgery and he did possess the requisite qualification, the conclusion is irresistible that the High Court committed serious error in holding that he did not have the necessary qualification for being appointed as an Assistant Professor in the Institute.

Mr. Venna appearing for the writ petitioner who is the respondent here, did raise a contention that the Diploma that was given to Dr. Vijaykumar was of the year 1987 and therefore that should be the

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relevant date for holding that he passed the examination in question and if that is taken to be the date of passing the examination, then he did not possess requisite experience thereafter. But in the counter affidavit filed by Dr.Rajan it has been clearly indicated that Dr.Vijaykumar though completed the course in 1983, passed the examination in November, 1985. In view of this clear admission in the counter-affidavit the aforesaid contention is of no substance. In view of our earlier conclusion that Dr.Vijaykumar did possess the requisite qualification for being appointed as Assistant Professor in terms of the advertisement that was issued and the High Court committed error, we have no other alternative than to set aside the impugned judgment of the High Court. Mr.Verma further contended that the contention of Dr.Rajan in the writ petition that both the posts were meant for the two reserved category candidates not having been answered by the High Court, the matter should be remitted back to the High Court for reconsideration. We would have ordinarily remitted the matter to the High Court for reconsideration of the question. But as it appears in the Select List that was prepared one candidate was appointed from the reserved category and another reserved category candidate was kept in the waiting list and Dr.Rajan was not even included in the waiting list obviously because he was not found suitable for the post in question.

That apart, the advertisement does not clearly indicate that in fact both the posts of Assistant Professor of Surgery were meant for the two reserved category candidates. In that view of the matter we think it futile to remit the matter to the High Court again for reconsideration of the question.

In the aforesaid premises, the impugned judgment of the High Court is set aside and these appeals are allowed accordingly.

Sd/-
(B.Pattanaik)
Sd/-
(B.N.Agrawal)

New Delhi
May 2, 2001