

**THE HIGH COURT OF MADHYA PRADESH  
WP 24058/2019**

**Dr. Bharat Jain vs. State of MP and Others**

**Gwalior, Dated :25/11/2019**

Shri N.K.Gupta, Senior Advocate with Shri D.P. Singh Counsel  
for the petitioner

Shri Ankur Mody, Add. Advocate General for the respondents  
No. 1 and 2/ State.

Shri M.P.S. Raghuvanshi, Advocate for the respondent no.3.

Heard finally.

This petition under Article 226 of the Constitution of India has been filed against the order dated 7-11-2019 passed by respondents no. 1 and 2 by which the services of the Petitioner have been sent on deputation to Medical College, Shahdol on the post Professor-cum-Head of Department (Pathology) with an additional charge of the post of In-charge Dean, Govt. Medical College, Satna.

(2) The case of the petitioner in short is that G.R. Medical College, Gwalior is an Autonomous Society registered under the Societies Registrikaran Adhiniyam, 1973 (Adhiniyam 1973). The Society is under the Control of Directorate of Medical Education. The petitioner was initially appointed on the post of Demonstrator by order dated 11-7-1980. Thereafter, in the year 1984, he was appointed on the post of Ad- hoc Professor. The services of the petitioner were regularized in the year 1986. He was further promoted to the post of Professor on

16-5-2005. The petitioner was a Govt. Employee and after the institution was declared as autonomous body, the petitioner opted to remain in the Govt. Cadre and therefore, he was promoted by the State Govt. to the post of Professor-cum-HOD (pathology). It is the case of the petitioner that his services are governed by the Rules which are known as "Madhya Pradesh Shasi Chikitsa Mahavidyalaya Shekshanik Adarsh Niyam, 2018" (In short "Rules 2018"). It is the case of the petitioner that Rule 9 of Rules, 2018 relates to the deputation wherein clause 9.1 and 9.2 gives the power to the Working Committee for filling the posts by way of deputation. It is also claimed by the petitioner that his services can only be sent on deputation by taking consent of the employee after obtaining recommendations of Working Committee of the borrowing department as well as the Parent Department, however, no concurrence has been taken from the borrowing as well as Parent Department.

(3) It is the case of the petitioner, that after, he opted for State Govt., his services were deemed to be on deputation to G.R. Medical College, Gwalior. On 16-11-2018. the G.R. Medical College, Gwalior issued an advertisement for appointment on the post of C.E.O. Cum Dean and after obtaining due permission from Dean, G.R. Medical College, the petitioner also participated in the appointment process and got selected on the post of C.E.O.-cum-Dean of G.R. Medical

Collage for a period of 5 years or till the age of superannuation, whichever is earlier and accordingly appointment order dated 5-12-2018 was issued. The petitioner assumed the charge of CEO-Cum-Dean, G.R. Medical College on 5-12-2018. It is also claimed that the State Government created the pressure and the whatsapp message was also sent on 7-10-2019. It is submitted that by the impugned order dated 7-11-2019, the petitioner has been sent on deputation to Govt. Medical College, Shahdol on the post of Professor/H.O.D. Pathology Department with an additional charge of Dean, Govt. Medical College, Satna and by the same order, he was relieved with immediate effect.

(4) Challenging the impugned order dated 7-11-2019, it is submitted by the Counsel for the petitioner that the impugned order amounts to repatriation without completing the tenure of 5 years and the impugned order has also been passed, without assigning any reason. It is further submitted that the order dated 5-12-2018 (Annexure P/5) by which he was appointed on the post of C.E.O.-Cum-Dean of G.R. Medical College, Gwalior has not been cancelled. The prior consent of the petitioner has also not been obtained prior to issuance of the impugned order. It is further submitted that the petitioner was appointed on the post of C.E.O.-cum-Dean, G.R. Medical College, Gwalior for a period of 5 years or till the age of superannuation whichever is earlier and since, the petitioner has been

sent to Medical College, Shahdol before the completion of tenure of 5 years, therefore, the impugned order amounts to curtailment of deputation period and thus, the impugned order is bad. To buttress his contentions, the Counsel for the petitioner has relied upon the judgment passed by the Supreme Court in the case of **Union of India Vs. V. Ramakrishnan and others** reported in **(2005) 8 SCC 394** and judgment passed by this Court in the case of **C.R. Gaur VS. State of M.P. and others** reported in **2008(3) MPHT 24 (DB)** and **Samar Bahadur (Dr.) Vs. State of M.P. and others** reported in **2009(II) MPJR 89**. It is further submitted that the appointment order of the petitioner to the post of C.E.O.-cum-Dean has not been cancelled therefore, he cannot be sent on deputation to Medical College, Shahdol.

(5) Per contra, the stand of the respondent no. 1 to 3 is that in the year 1987, M.P. Medical Education (Gaz.) Service Recruitment Rules, 1987 (In short Rules 1987) were enacted and Section 4 of the said rules provide that persons already appointed on the substantive post shall constitute members of the service. Thus, it is claimed that the petitioner is governed by Rules, 1987 and not by Rules, 2018. According to Rule 13 of Rules 1987, the post of Dean is to be filled by Promotion and not by Direct Recruitment and the feeding cadre is that of Professor. In the year 1998, the G.R. Medical College was granted

the autonomous status and thereafter all the recruitments were made by the G.R. Medical College as per the Autonomous Medical College Rules, 1988. By order dated 16-5-2005, the Govt. Promoted the petitioner to the post of Professor. In the year 2018, the Govt. Vide its circular dated Nil/01/2018 published model service rules, 2018 and the employees whose services were governed by Rules 1987, would be deemed to be on deputation in their respective Medical Colleges. So far as other employees are concerned, they shall be recruited by the Autonomous Body of Medical College and their services would be amalgamated in the respective Medical College. Even after the Rules 2018 came into force, the petitioner still continued to be the employee of State Govt through Medical Education Department and was working on the Substantive Post of Professor (Pathology). The Executive Council of G.R. Medical College advertised to fill up the post of Dean by direct recruitment and the petitioner also applied for the same and accordingly, he was appointed as Dean. The Dean of Medical College, Shahdol vide its letter dated 17-10-2019 apprised the respondent regarding deficiency in the faculty of Professor (Pathology) and also expressed its concern about the pending inspection by M.C.I. On account of administrative exigency, the petitioner who is on deputation to G.R. Medical College has been sent to Medical College Shahdol on the post of Professor (Pathology). It is

submitted that the petitioner is the employee of State Govt. and is holding the substantive post of Professor and is on deemed deputation in G.R. Medical College, and now he has been sent on deputation by his Parent Department to Govt. Medical College, Shahdol. There is no question of repatriation. As per F.R. 110, validity of impugned order cannot be questioned for want of consent. So far as the question of repatriation is concerned, it is the case of the respondents, that the petitioner has not disowned his lien on the post of Professor and still he claims himself to be the employee of State Govt. and at the same time, he is claiming himself to be the employee of G.R. Medical College, by virtue of his appointment on the post of C.E.O.-cum-Dean. There cannot be two employers.

(6) Heard the learned Counsel for the parties.

(7) On the basis of the submissions made by the Counsel for the parties, the following situation would emerge :

1. That in the year 1980, the petitioner was appointed on the post of Demonstrator, in G.R. Medical College, Gwalior.
2. M.P. Medical Education (Gazetted) Service Recruitment Rules, 1987 were enacted and Rule 4 provides that the persons already appointed on the substantive post shall constitute member of the service.
3. Rule 5 of Rules 1987 provides for classification of service

and post of Dean is classified as Class I post.

4. As per Rules, 1987, the post of Dean is to be filled by way of promotion for which the feeder post is Professor.

5. In the year 1998, G.R. Medical College was granted autonomous status and thereafter all the recruitments were made by GR Medical College as per Autonomous Medical College Rules, 1998.

6. The Petitioner opted for State Cadre and thus continued to be an employee of the State Govt. and never became the employee of autonomous body.

7. The petitioner was promoted to the post of Professor by the State Govt. by order dated 16-5-2005.

8. Madhya Pradesh Autonomous Medical College Educational Model Service Rules, 2018 were framed and Rule 5.1 reads as under :

**आमेलन तथा चयन प्रक्रिया**

5.1 कार्यकारिणी समिति द्वारा पूर्व से नियुक्त चिकित्सा शिक्षक का जो इन नियमों के आरम्भ होने के अव्यवहित पूर्व से ही धारित किया हुआ हो इन नियमों में संलग्न अनुसूची एक विनिर्दिष्ट पदों में से उपयुक्त पद पर एवं वेतनमान पर आमेलित किया जाएगा।

परन्तु ऐसे चिकित्सा शिक्षक जिनकी नियुक्ति राज्य शासन ने म प्र चिकित्सा शिक्षा राजपत्रित सेवा भरती नियम 1987 के तहत की हो, की सेवा राज्य शासन के नियमों के तहत शासित होगी और उसे स्वशासी समिति में प्रतिनियुक्ति पर लिया गया माना जाएगा।

Since, the petitioner is governed by Rules, 1987 and he had opted State Cadre, therefore, he is deemed to be on deputation

in G.R. Medical College, an autonomous College, and he continues to be a State Employee.

9. An advertisement was issued by G.R. Medical College, Gwalior for appointment on the post of C.E.O. -cum-Dean and the petitioner, after taking permission from Dean, G.R. Medical College, Gwalior also applied for the said post and by order dated 5-12-2018, he was appointed on the post of C.E.O.-cum-Dean, G.R. Medical College, Gwalior.

10. By the impugned order dated 7-11-2019, the petitioner has been sent on deputation to Medical College, Shahdol with additional charge of the post of Dean, Govt. Medical College, Satna.

(8) Challenging the impugned order dated 7-11-2019, it is submitted by the Counsel for the petitioner, that the said order amounts to repatriation, because the petitioner has been appointed on the post of C.E.O.-cum-Dean, G.R. Medical College, but he has been sent on deputation on the post of Professor (Pathology), Govt. Medical College, Shahdol. Further, before sending him on deputation to Govt. Medical College, Shahdol, no consent of the petitioner was obtained. Even the consent of the Parent Department as well as the Borrowing Department has not been obtained.

(9) Heard the learned Counsel for the parties.



(10) The first moot question for consideration is that whether the petitioner is a Govt. Employee or is an employee of G.R. Medical College, Gwalior, an autonomous body.

(11) It is the case of the petitioner, that in the year 1997, he had opted the State Cadre, and continued to remain the State Govt. employee and accordingly he was promoted to the post of Professor by order dated 16-5-2005 passed by the State Govt. It is also not the case of the petitioner, that he has either disowned his lien on the State Post or he has resigned from the post of Professor before accepting the employment in the autonomous body i.e., G.R. Medical College, Gwalior. The petitioner in para 5.3 of his writ petition has pleaded as under :

"5.3. That, the petitioner was an employee of State Govt., already been posted at G.R. Medical College, Gwalior, wherein performing his duties and after declaring the institution as autonomous, the petitioner has remained continue in the cadre of and his services were governed by the State Government, therefore, he was promoted in the same cadre and posted at G.R. Medical College over the post of Professor -cum-H.O.D. (Patho) which was as per the order of State Government."

(12) Thus, it is clear that the petitioner is still a Govt. Employee and his substantive post is Professor.

(13) It appears that on 16-11-2018, the G.R. Medical College, issued an advertisement for recruitment/appointment on the post of C.E.O.-cum-Dean and the petitioner after obtaining NOC from Dean, G.R.

Medical College, Gwalior, also participated in the said recruitment process and by order dated 5-12-2018, he was appointed on the post of C.E.O.-cum-Dean, G.R. Medical College, Gwalior. As per Model Rules, 2018, the post of Dean is to be filled by Direct Recruitment, whereas according to Rules, 1987, the post of Dean is to be filled by Promotion. Thus, if the petitioner is governed by Rules, 1987, then he cannot be appointed on the post of Dean by direct recruitment and he can only be promoted to the post of Dean. **It is not out of place to mention here that the post of Dean was advertised by G.R. Medical College and thus, the said autonomous body is the employer.**

(14) Since, the petitioner is the employee of State Govt., therefore, he cannot accept employment under G.R. Medical College, which is an autonomous body, without either tendering his resignation from the post of Post or without seeking NOC from the State Govt.

(15) It is the case of the petitioner, that he had applied for the post of C.E.O.-cum-Dean after obtaining due NOC from State. Accordingly, the Counsel for the respondent no. 3 has produced the record of recruitment process along with the application of the petitioner. The Petitioner had annexed the NOC obtained from Dean, G.R. Medical College, Gwalior whereas the G.R. Medical College, which is an autonomous body and is not the employer of the petitioner and the

petitioner did not obtain NOC from his employer.

(16) It is submitted by the Counsel for the petitioner that in fact the petitioner had applied to the State Govt for grant of NOC and the Dean, G.R. Medical College, after obtaining necessary instructions from the State Govt. had granted NOC. Considered the submission made by the Petitioner. From the record, it is clear that the petitioner had never applied to the State Govt. for grant of NOC but he applied to the Dean G.R. Medical College, Gwalior for grant of NOC. The application made by the petitioner for grant of NOC reads as under :

S.No. 1053/Patho/2018 Gwalior 24-11-2018  
To,  
The Dean,  
G.R. Medical College,  
Gwalior

Sub:- Regarding No Objection Certificate for applying for the post of Chief Executive Officer and Dean G.R. Medical College Gwalior.

*Respected Sir,*

Kindly grant me NOC for applying for the post of CEO & Dean of G.R. Medical College, Gwalior M.P.

Thanking You.

Prof.& Head  
Dept. Of Pathology

The NOC granted by Dean G.R. Medical College, Gwalior reads as under :

क्रमांक 4730स्था/राज/2018 दिनांक 26/11/2018

अनापत्ति प्रमाण पत्र

प्राध्यापक एवं विभागाध्यक्ष पैथोलोजी विभाग के पत्र क्रमांक 1053 दिनांक 24.11.2018 के ताररम्य मे डा भरत जैन, प्राध्यापक पैथोलोजी विभाग गजराराजा चिकित्सा महाविधालय ग्वालियर को चिकित्सा महाविधालय ग्वालियर मे मुख्य कार्यपालन अधिकारी एवं अधिष्ठाता के पद पर आवेदन करने

हेतु अनुमति प्रदान की जाती है।

अधिष्ठाता

गजराराजा  
चिकित्सा  
महाविधालय  
ग्वालियर मध्य  
प्रदेश

(17) It is no where mentioned in the above mentioned letter, that the Dean had even consulted the State Govt., before issuing NOC. Further the copy of this letter was not even endorsed to the State Govt. Thus, it is clear that the petitioner had participated in the recruitment process for the post of C.E.O. Cum Dean, without obtaining any NOC from the State Govt.

(18) In the alternative, it is submitted by the Counsel for the petitioner, that as per the provisions of Rule 7(6) of Rules, 2018, it was not necessary to seek NOC from the employer.

(19) Considered the submission made by the Counsel for the petitioner.

(20) Rule 7(6) of Rules, 2018 read as under :

महाविधालय मे सेवारत व्यक्ति जो सीधी भरती के पद के लिए अर्हताधारी हो सीधी भरती के पद के विरुद्ध आवेदन देने के लिए स्वतंत्र होगा और ऐसे आवेदन के लिए उसे नियोक्ता से अनापत्ति नही लेना होगी।

(21) By the above mentioned provision, exemption has been given to an employee working in the College, from obtaining NOC, however,

the benefit of this Rule cannot be extended to an employee who is on deemed deputation in the College. From the plain reading of this Rule, it is clear that all the employees who are working in the same autonomous body would not be required to obtain NOC because the employer would be the same i.e., autonomous body, but the employees who are working on deputation cannot be extended benefit of this rule otherwise, it would amount to encroaching upon the rights of the employer on whom, these rules are not applicable. The employees who are on deputation are not governed by Rules, 2018 but they are governed by Rules, 1987. Therefore, the contention of the petitioner is rejected.

(22) Further, it is not the case of the petitioner, that before applying for the post of C.E.O.-cum-Dean, he had already resigned from the post of Professor. Thus, it is clear that without tendering his resignation from the post of Professor and without obtaining NOC from the State Govt., the petitioner accepted the employment of G.R. Medical College, Gwalior which is an autonomous body. Thus, the present scenario is that the petitioner is an employee of State Govt. and at the same time, by accepting the employment under G.R. Medical College, an autonomous body, the petitioner is working under two employers which is not permissible. Therefore, it is held that the petitioner was not entitled to apply for the post of C.E.O.-

cum-Dean, G.R. Medical College, Gwalior and therefore, his appointment on the post of C.E.O.-cum-Dean, by G.R. Medical College, an autonomous body, is not binding on the State Govt. Further, the State Govt. had never given any NOC for appointment of the petitioner to the post of C.E.O.-cum-Dean, G.R. Medical College, Gwalior. Thus, the substantive Post of the petitioner is Professor and therefore, the State Govt. can send him on deputation on the said post of Professor.

(23) So far as the contention of the petitioner, that the consent of the Parent Department, i.e., G.R. Medical College, an autonomous body, has not been obtained is concerned, this Court has already held that the parent department of the petitioner is State and since, the impugned order dated 7-11-2019 has been issued by the parent department of the petitioner, therefore, the consent of the parent department is implied.

(24) So far as the consent of the borrowing department i.e., Govt. Medical College, Shahdol is concerned, the respondents no. 1 to 3 have relied upon the communication dated 17-10-2019 sent by C.E.O.-cum-Dean of Govt. Medical College, Shahdol, by which a demand was made for 1 Professor for Pathology Department. Thus, it is clear that the Borrowing Department has already given a consent by raising a demand of one Professor for the Pathology Department.

(25) So far as the question of repatriation is concerned, in the considered opinion of this Court, the submission made by the Counsel for the petitioner is misconceived. As already held, the petitioner is holding the post of Professor and he has not disowned his lien on the said post. He has also not resigned from the post of Professor. Further, the Petitioner is a State Govt. employee. However, without seeking NOC from the State Govt., the petitioner accepted a new appointment on the post of C.E.O.-cum-Dean, G.R. Medical College, Gwalior which is an autonomous body. Therefore, the appointment of the petitioner on the post of C.E.O.-cum-Dean would not create any right in favor of the petitioner to claim himself to be equivalent to the post of Dean, because the petitioner is governed by Rules, 1987 and the post of Dean can be filled by promotion only and further, the petitioner has not been appointed by the State on the post of C.E.O.-cum-Dean, but he has been appointed by an autonomous body and thus, the petitioner continues to hold his substantial post of Professor and by the impugned order, he has been sent on deputation to Govt. Medical College, Shahdol on the same post.

(26) So far as the question of curtailment of period of deputation is concerned, as per the provisions of Rule 5.1 of Rules, 2018, every employee who has been appointed under Rules, 1987 shall be deemed to be on deputation. No period of deputation has been prescribed.

The petitioner was on deputation on the post of Professor. The appointment of the petitioner by the autonomous body, i.e., G.R. Medical College, Gwalior on the post of C.E.O.-cum-Dean cannot be treated as on deputation. The State Govt. never promoted the petitioner to the post of Dean. He was not on deputation in the said capacity but he was on deputation in the capacity of Professor. The appointment order issued by the autonomous body i.e., G.R. Medical College, cannot be treated as an order issued by the State Govt. Thus, in the light of order dated 5-12-2018, it cannot be said that the petitioner was sent on deputation by the State Govt. on the post of C.E.O.-cum-Dean for a period of 5 years or till age of superannuation, whichever is earlier. As already held that the order of appointment of the petitioner on the post of C.E.O.-cum-Dean was not binding on the State Govt., therefore, it cannot be said that by issuing order dated 7-11-2019, the State Govt. has curtailed the period of deputation.

(27) So far as the submission, that the State Govt. has not cancelled the appointment order dated 5-12-2018 is concerned, as already held, the petitioner is in the State Cadre, and was working on the post of Professor, whereas the G.R. Medical College, Gwalior has appointed him on the post of C.E.O.-cum -Dean. The petitioner has neither tendered his resignation from the post of Professor nor he has disowned his lien on the post of Professor. Thus, the petitioner, is still



treating himself to be an employee of the State Govt. Therefore, it was not necessary for the State Govt. to cancel the order of appointment dated 5-1-2018.

(28) Further, after the Medical Colleges were made autonomous, the employees were given the option of either remaining in the State Cadre or to shift to employment of Society. Since, the petitioner had opted the State Cadre, therefore, he cannot shift to the employment of Society by seeking appointment on the post of C.E.O.-cum-Dean, G.R. Medical College, by treating his lien on the post of Professor.

(29) No other argument is advanced by the Counsel for the Petitioner.

(30) Accordingly this Court is of the considered opinion, that the order dated 7-11-2019 passed by State does not suffer from any infirmity. There is no reason to interfere with the said order.

(31) The petition fails and is hereby **Dismissed**.

**(G.S. Ahluwalia)**  
**Judge**