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WP-6218-2023

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

&

HON'BLE SHRI JUSTICE DUPPALA VENKATA RAMANA

ON THE 20th OF FEBRUARY, 2025

WRIT PETITION No. 6218 of 2023

SHRI CHINMAY CHINCHOLIKAR

Versus

*THE STATE OF MADHYA PRADESH PUBLIC HEALTH AND FAMILY
WELFARE DEPARTMENT AND OTHERS*

.....
Appearance:

Shri Shekhar Sharma, Senior Advocate (through VC) with Ms. Amrita
Joshi - Advocate for the petitioner.

Shri Kushal Goyal - Dy.A.G for the respondent No.3/State.

Shri Shantanu Sharma, (through VC) with Shri Lokendra Joshi -
Advocate for the respondent No.4.

Shri Kunwar Sumersingh Chouhan - Advocate for the respondent No.5.

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WITH

WRIT PETITION No. 8412 of 2023

DR. RAHUL PORWAL

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Kamal Tiwari - Advocate for the petitioner.

Shri Kushal Goyal - Dy.A.G for the respondent/State.

Shri Shantanu Sharma, (through VC) with Shri Lokendra Joshi -
Advocate for the respondent No.2.



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WRIT PETITION No. 24694 of 2024

DR. ANIL KUMAWAT

Versus

THE STATE OF M.P. AND OTHERS

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Appearance:

Shri Kamal Tiwari - Advocate for the petitioner.

Shri Kushal Goyal - Dy.A.G for the respondent/State.

Shri Shantanu Sharma, (through VC) with Shri Lokendra Joshi -

Advocate for the respondent No.2.

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ORDER

Per. Justice Vijay Kumar Shukla

Regard being held to the similitude of reliefs and facts, all the petitions are being disposed off by the common order. For the sake of convenience, the facts of the case are noted from WP No.6218/2023.

2. The present petition is filed under Article 226 of the Constitution of India.

3. Brief facts of the case are that in the year 2014 the petitioner completed MBBS and was registered in Madhya Pradesh Medical Council i.e respondent No.4 in the year 2015. On 6/6/2018 he was selected for the post of Medical Officer(second class), pursuant to an exam conducted by the MPPSC, by the respondent No.1. The respondent No.1 vide its notification dated 20/7/2020 offered admissions in two year Post graduate Diploma courses in various disciplines in district/civil hospitals of the State after obtaining affiliation from the College of Physicians and Surgeons ("C.P.S") of Mumbai. Applications were invited by the respondents for admission to a



total of 98 P.G Diploma seats for the academic session 2020-2022. The respondents issued guidelines for the same. The seats for diploma in orthopaedics were provided and it was stated that in order to grant recognition to PG diploma in the subject of orthopaedics by respondent No.1, an amendment in the Act will be made separately. On 7/9/2020 respondent No.3 allotted seats for admission to diploma through counselling and sponsorship was issued to regular medical officers for 24 months from the date of their joining. On 3/9/2020 revised results of counselling were issued by the respondents showing petitioner qualified in the admission process. During the years 2020-2022, vide departmental orders passed by the respondents, petitioner served at different places of posting i.e primary health center, Dawana, District Barwani, District Hospital Ratlam; Head Office, Directorate of Health Services, Bhopal; and, at District Hospital Ujjain. Thereafter, the course of the petitioner was completed after 24 months on 10/9/2022. On 28/2/2023, petitioner applied for registration for P.G. qualification. During year 2021-2022 petitioner alongwith others submitted various representations to respondents for notifying and including P.G Diploma in Orthopaedics as a post graduate course and requested for making an amendment to the Madhya Pradesh Ayurvedigyan Parishad, 1987, however, till date neither any satisfactory reply has been given nor any action for the said recognition been taken. Thereafter, the respondent has not taken any steps for releasing the said undisputed and admitted amount.

4. The present petition has been filed seeking following reliefs:

- (i) To call for the record of impugned inaction of the respondents.*
- (ii) To issue a -writ in the nature of mandamus directing*



the respondent to Notify and include the course of P.G. Diploma in Orthopaedics in the list of recognized courses under the Madhya Pradesh Medical Council Act, 1987 with effect from 10/09/2022, the date of completion of the said course by the petitioner.
(iii) Any other relief, which this Hon'ble Court deem just and proper in view of aforesaid submissions.

5. Thus, from relief "II" it is clear that the petitioner is seeking a writ of Mandamus directing the respondents to notify and include the course of P.G Diploma in Orthopaedics in the list of recognized courses under the Madhya Pradesh Ayurvigyan Parishad, 1987, 1987 w.e.f 10/9/2022 i.e the date of completion of the said course by the petitioner.

6. The respondent Nos.4&5/National Medical Commission (NMC) has submitted that the course of Post Graduate Diploma (orthopaedics) issued by the College of Physicians and Surgeons, Mumbai was deleted from Ist Schedule of Indian Medical Council Act, 1956 by the Central Government vide notification dated 22/1/2018 and the said notification has not been challenged. Therefore, the relief sought in the petition cannot be granted.

7. We have heard learned counsel for the parties. The question that arises for consideration is that whether under Article 226 of the Constitution of India, this Court can issue a direction to the respondents to include the course of post graduate diploma (orthopaedics) issued by College of Physicians and Surgeons, Mumbai in the Ist Schedule of Indian Medical Council Act, 1956 which was already deleted by the Central Government vide notification dated 22/1/2018 because the said relief infact would amount to seeking a direction to legislate by directing for amendment in the Ist schedule of Indian Medical Council Act, 1956 ?



8. It is relevant to mention here that the decision to notify or include a particular course in the list of recognized courses is based on the recommendation of Medical Council of India (now nomenclature "National Medical Commission") which is an expert body for the said purpose. The said National Medical Commission is constituted under the provisions of National Medical Commission Act, 2019. The National Medical Commission, is an Expert Statutory Body and is constituted by the Central Govt., through the 4 Autonomous Boards, also constituted by the Central Govt., and has explicit powers to regulate medical education at undergraduate level including to determine standards thereof, to regulate medical education at postgraduate level including to carry out inspections to assess, as well as, rate medical colleges/institutions and to regulate professional conduct, promote medical ethics, as well as, to maintain a National Register of all licensed medical practitioners & a separate National Register of Community Health Providers.

9. The course of Post Graduate Diploma (Orthopaedics) issued by College of Physicians and Surgeons, Mumbai was deleted from the Ist schedule of the Indian Medical Council, Act by the Central Government vide notification dated 22/1/2018. Once, the said course itself has been deleted from the Ist schedule of the said Act, the Court under Article 226 of the Constitution of India cannot direct the respondents to recognize the said course and to include the same in the list of recognized courses under the Madhya Pradesh Ayurvigyan Parishad, 1987 w.e.f 10/9/2022.

9. The petitioner is claiming registration of Diploma in Orthopaedics by M.P Medical Council alongwith allied reliefs and thus, he is praying for



recognition of the said course which cannot be granted under Article 226 of the Constitution of India in the light of the judgment passed by the Division Bench of in *W.A No.255/2017(Madhya Pradesh Medical Council vs. Dr. (Mrs.) Anuradha Gupta and Ors.)*.

The relevant para of the said order is reproduced as under:

The challenge is on the ground that the additional qualification obtained from the College of Physician and Surgeons, Mumbai unless recognized by the Indian Medical Council under Indian Medical Council Act, 1956 as additional qualification, cannot be registered.

(2) The contention when tested on the anvil of Section 2 (d) of 1987 Act has substantial force. The Recognized Medical Qualification as per .section 2 (d) of 1987 Act means:

"(d) "recognised medical qualification" means —

(i) any of the medical qualifications for the time being, included in the Schedules to the Indian Medical Council Act. 1956 (No.102 of 1956);

(ii) any of the medical qualifications Specified in the Schedule." -Thus unless a medical qualification is specified in Schedule under 1956 Act the State has no authority to enter the qualification in the State Medical Register. Because section 13 of 1987 Act requires that the, additional qualification must be a recognized medical qualification

3) In view whereof the impugned order cannot be given the stampe of approval.

4) Consequently, it is set aside.

5) It is however informed that the Central Government in exercise of the powers conferred by sub-section (2) of Section 11 of 1956 Act with consultation of Medical Council of India, vide notification S.O. 3402 (E) dated 17.10.2017 published in Gazette of India. Extraordinary dated 23.10.2017 has amended the First Schedule of the Act 1956 and have inserted Broad Specialty Diploma Courses (two years courses at the Post MBBS level), as find mentioned in the notification, granted by College of Physicians and Surgeons Mumbai.

6) In view whereof, if the respondent no.1 possesses the



qualification as notified vide notification dated 17.10.2017 she is at liberty to file fresh application under section 13 of the 1987 Act which shall be considered on its merit.

10. In the case of *Dr. Priya P. Shah vs. Union Of India (W.P. No.6751/2018)* decided on 13/7/2018 reported in *2013 MHLJ Online 147*, the Apex Court has come down very heavily on the Government of India to ignore the opinion of Medical Council of India which is an expert body for recognizing the course.

11. Counsel for the petitioner vehemently argued that this Court can issue a direction to include such courses in Ist schedule of the Indian Medical Council, Act 1956 and placed reliance on the judgment passed in the case of *Chandrakant Muljibhai Parikh vs. State of Gujarat* reported in *AIR 2001 Gujarat 234*. On going through the said judgment we noted that the said case was a case of delegated legislation and in that context it was held that if the State Government failed to frame the Rules for 5 years despite enabling provision under the Act, the Court can ask the Government to explain why the Rules were not enacted. However, even in that case the High Court did not direct for legislation but disposed off the petition with direction to the respondents to decide the petitioner's application.

12. The law relating to issuance of a direction to legislate a law is well settled in the case of *Narinder Chand Hemraj vs. Lt. Governor Administrator Union Territory Himachal Pradesh* reported in *AIR 1971 SC 2399* held that no Court can issue a mandate to the legislature or a subordinate legislative body to enact or to enact law which it was competent to enact. In the case of



A.K Roy vs. Union of India reported in (1982) 1 SCC 271 it was held that a mandamus cannot be issued to the Central Government compelling it to bring the amendment in the Act. In the case of *Supreme Court Employees Welfare Association vs. Union of India* reported in (1989) 4 SCC 187 it was held that the legislative functions cannot be directed to do a particular act. In the case of *State of Jammu and Kashmir vs. A.R. zakki and Others* reported in AIR 1992 SC 1546, it was held that the writ of mandamus cannot be issued to legislature to enact a particular legislation. In the case of *Union of India vs. Deoki Nandan Agrawal* reported in 1992 Supp (1) SCC 323 while dealing with the prescription of cut off date for retired Government servant, the Apex Court held in para 14 that it is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred in the Courts. The Court cannot add word to a statute or read word into it which are not there. Modifying or altering the scheme of applying it to others which are not otherwise entitled to under the Scheme, will not also come under the principle of affirmative action adopted by the Courts. In case of *Suresh Seth vs. Commissioner, Indore Municipal Corporation and Ors.* reported in 2005 (13) SCC 287, a Bench of three judges clearly held that Court cannot direct legislature to make particular kind of enactment. The Full Bench of this Court while examining the notification regarding constitution of municipal council and Nagar Parishad held that the same is a legislative function and the Court



cannot interfere with the legislative function on the maxim of *audi alteram partem*. A Division Bench of the High Court of Bombay in the case of *Dr. Kavyansh Bhan and Anr. vs. Union of India* reported in *2022 (2) MHLJ 751* held that non recognition of medical courses and seeking quashment of notification to the extent that courses pursued by the petitioners are de-recognized were dismissed as it is for the legislature to recognize a medical course or not to recognize medical course by including them in the Schedule. Such action is based on the recommendation of an expert body like Indian Medical Council.

13. In view of the aforesaid enunciation of law, we are of the considered view that the relief sought in the present Writ Petition amounts to legislation therefore, no direction can be issued for including the course of Post Graduate Diploma in Orthopaedics in the list of recognized courses under the Madhya Pradesh Ayurvedigyan Parishad Adhiniyam, 1987 w.e.f 10/9/2022(the date of completion of the said course by the petitioner).

13. Accordingly, the petition being devoid of merit and substance is hereby **dismissed**.

14. No order as to cost.

(VIJAY KUMAR SHUKLA)
JUDGE

(DUPPALA VENKATA RAMANA)
JUDGE