

Neutral Citation :Neutral Citation No. - 2024:AHC:141199-DB

(Judgment reserved on 15.07.2024)

(Judgment delivered on 02.09.2024)

Court No. - 29

**Case :-** SPECIAL APPEAL No. - 46 of 2024

**Appellant :-** Dr Jitendra Singh Kushwaha

**Respondent :-** State Of Up And 4 Others

**Counsel for Appellant :-** Awadh Behari Singh,Gaurav Pundir

**Counsel for Respondent :-** C.S.C.,Kunal Shah,Sanjay Kumar Om

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

**(Per: Hon'ble Mahesh Chandra Tripathi,J.)**

1. Heard Sri Awadh Behari Singh, learned counsel for the Appellant/ respondent No.5, Sri Ashok Khare, learned Senior Advocate assisted by Sri Kunal Shah, learned counsel for the respondent No.5/ petitioner, Sri Mohan Srivastava, learned Standing Counsel for the State-respondents and Sri Sayujya Singh, Advocate appearing along with Sri Vivek Kumar Singh, learned counsel for the respondent No.2 - National Medical Commission.

2. The present intra court appeal is directed against the impugned common Judgment and order dated 22.12.2023 passed by Hon'ble Single Judge passed in Writ-A No.17887 of 2022, (Dr. Sheo Kumar Vs. State of U.P. and others), Writ-A No. 11798 of 2021, (Dr. Jitendra Singh Kushwaha Vs. State of U.P. and others) and Writ-A No.4236 of 2022 (Sheo Kumar vs. State of U.P. and Others).

### **FACTUAL MATRIX OF THE CASE**

3. Facts in nutshell essential for disposal of the instant appeal are noted

hereinbelow.

Petitions filed by the respondent No.5/ Petitioner	Petition filed by the Appellant/ respondent No.5
<p>1. Writ-A No. 17887 of 2022 was filed by Dr. Sheo Kumar, whose selection was canceled by the Commission<sup>1</sup> vide its order dated 10.08.2022.</p> <p>2. When the Commission failed to process the appointment despite the State Government's clarification and failed to proceed with the appointment of Dr. Sheo Kumar – the petitioner/respondent No. 5, he filed Writ-A No.4236 of 2022 (Sheo Kumar vs. State of U.P. and Others), praying for a mandamus to direct the Respondent Commission to process his candidature.</p>	<p>Writ-A No. 11798 of 2021 was filed by Dr. Jitendra Singh Kushwaha, challenging the selection of Dr. Sheo Kumar as Principal (Allopathy) in the Department of Medical Education on the ground that Dr. Sheo Kumar did not possess the requisite experience under the relevant Recruitment Rules.</p>

4. The controversy involved in the aforementioned petitions was decided by the learned Single Judge with a common judgment and order dated 22.12.2023. **The short question before the learned Single Judge was whether 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.** The Commission had invited applications for the solitary post of Principal (Allopathy) in the Department of Medical Education through an advertisement dated 22.12.2020. The "Essential Qualification" for the said post required a

1. The Uttar Pradesh Public Service Commission

candidate to have a total teaching experience of at least 10 years as a Professor/Associate Professor/Reader in a Medical College/Institution recognized by the MCI<sup>2</sup>, of which at least 5 years should be as a Professor in a department. As the appellant/respondent No.5 raised questions about the alleged experience of the respondent No. 5/ petitioner – Dr. Sheo Kumar, his experience is reproduced below for ready reference:

**Experience of the Petitioner/Respondent No. 5:**

- Associate Professor: 3 years
- Additional Professor: 4 years
- Professor: 3 years 6 months 22 days
- Total cumulative experience: 10 years, 6 months, 22 days
- Experience as Professor and Additional Professor: 7 years, 6 months, 22 days

5. In response to the advertisement, the Commission shortlisted the candidates and called them for an interview. During the interview, the Respondent No.5/Petitioner was asked by the Commission to submit an undertaking to the effect that within 30 days he would produce: (i) certified copies of the experience certificate demonstrating that he had 10 years of teaching experience, including 5 years as a Professor, and (ii) guidelines from the Medical Council of India treating both the posts of Professor and Additional Professor as equivalent. In response, the Respondent No.5/Petitioner complied with the undertaking and submitted the requisite documents to the Commission on 20.07.2021. The result of the selection process was declared, and the Respondent No.5/Petitioner was provisionally selected. Before the Commission could forward the proposal for the appointment of the Petitioner/Respondent No. 5 as Principal (Allopathy) to the State Government, the appellant herein preferred a Writ Petition, which was registered as Writ A No.11798 of 2021 (Dr. Jitendra Singh Kushwaha vs. State

<sup>2</sup> The Medical Council of India

of U.P. and Others). In that proceeding, the Commission initially took the stand that the candidature of the Respondent No.5/Petitioner had been processed provisionally and that the Commission would not recommend his name until adequate evidence was provided to support his assertion that he had the requisite teaching experience as a Professor. In this proceeding, the Respondent No.5/Petitioner relied upon his experience as an Additional Professor at SGPGIMS<sup>3</sup>, arguing that it should be counted as experience on the post of Professor since both posts are equivalent. In this backdrop, the learned Single Judge initially observed that the controversy could be resolved by calling the State Government to determine the equivalence of the post of Additional Professor and Professor. Later, the learned Single Judge, by order dated 08.10.2021 (as corrected on 22.10.2021), directed the Director General of Medical Education and Training, Uttar Pradesh, to take a decision regarding the equivalence of the posts of Professor and Additional Professor in consultation with the NMC<sup>4</sup>. By letter dated 10.01.2022, the Principal Secretary of the Department of Medical Education issued an order clarifying that the post of Additional Professor at SGPGIMS and Professor in a State Medical College are equivalent, and the State Government also declared the Petitioner eligible for appointment as Principal, directing the Commission to take further steps. The learned Single Judge, by order dated 31.01.2022, observed that the pendency of Writ-A No.11798 of 2021 filed by the Appellant/ respondent no.5, would not impede the Commission from proceeding further.

6. Thereafter, the Appellant/ respondent No.5 subsequently amended his Writ Petition and challenged the clarificatory order dated 10.01.2022 issued by the State Government, treating the posts of Additional Professor at SGPGIMS and Professor in a State Medical College as equivalent.

7. Subsequently on 30.05.2022, the State Government further clarified that, regarding experience, qualifications, nature of duty, and work, the post of

3 Sanjay Gandhi Post Graduate Institute of Medical Sciences

4 National Medical Commission

Additional Professor and Professor in a Medical College are the same, notwithstanding the difference in grade pay. The experience acquired by the Petitioner/Respondent No.5 was thus liable to be counted towards the requirement of 5 years' experience as a Professor.

8. When the Commission failed to process the appointment despite the State Government's clarification and failed to proceed with the appointment of Dr. Sheo Kumar – the petitioner/respondent No. 5, filed Writ A No.4236 of 2022 (Sheo Kumar vs. State of U.P. and Others), praying for a mandamus to direct the Respondent Commission to process his candidature. During pendency of the writ petition, the Commission, by order dated 10.08.2022, rejected the candidature of the Petitioner/Respondent No. 5 on the grounds that he did not have 5 years' experience as a Professor and refused to acknowledge his experience as an Additional Professor at SGPGIMS as equivalent to that of a Professor in a State Government Medical College.

9. The respondent No.5/ Petitioner then filed Writ-A No.17887 of 2022, challenging the order dated 10.08.2022. The learned Single Judge clubbed all three matters and treated Writ-A No.17887 of 2022 (Dr. Sheo Kumar vs. State of U.P. and Others) as the leading writ petition.

10. The issue for consideration before the learned Single Judge was **"Whether experience as an Additional Professor in a Medical College would also count as experience as a Professor, which a candidate is required to possess to become Principal of a Medical College under the relevant Rules."** The learned Single Judge also noted that while State Medical Colleges have a 3-tier hierarchical system of teaching faculty, i.e., Assistant Professor, Associate Professor, and Professor, institutions like SGPGIMS and AIIMS have a 4-tier faculty designation system, i.e., Assistant Professor, Associate Professor, Additional Professor, and Professor.

11. In the instant matter, the relevant Rules applicable are Rules, 1990<sup>5</sup>, which regulate the conditions of appointment and service of teaching faculty

<sup>5</sup> The Uttar Pradesh State Medical College Teachers' Service Rules, 1990

and Principals in State-run Medical Colleges. Rule 8 of the Rules, 1990 provides that a candidate for recruitment to various categories of posts in the service must possess the qualifications prescribed by the MCI from time to time. The MCI has also framed the Regulations, 1998<sup>6</sup>. The Regulations, 1998 prescribed the research and teaching experience required for both the posts, which is the same. A minimum of 8 years of post-PG experience is required for promotion to either the post of Additional Professor or Professor. In the Regulations, 1998, the post of Associate Professor constitutes the feeder cadre for both the posts of Professor and Additional Professor.

12. The learned Single Judge also took note of the essential qualifications prescribed for the post of Professor and Additional Professor in a Medical College as per Regulations, 1998. For ready reference, these are reproduced below:

<i>Posts</i>	<i>Academic Qualification</i>	<i>Teaching &amp; Research Experience</i>
<i>Professor/ Addl. Professor (8 years of Post PG Experience)</i>	<i>A post graduate qualification MD/MS in the concerned subject and as per the TEQ Regulation</i>	<i>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 1st Author or as corresponding author</i>

13. It is not in dispute that when the candidates applied for the post of Principal as per the advertisement in question, the required qualifications for the roles of Professor and Additional Professor in a Medical College, as noted by the learned Single Judge, are as follows:

<i>Posts</i>	<i>Academic Qualification</i>	<i>Teaching &amp; Research Experience</i>
<i>Professor/</i>	<i>A post graduate</i>	<i>(i) Associate Professor in the subject for 3 years</i>

<sup>6</sup> Minimum Qualification for Teachers in Medical Institutions Regulations, 1998

<i>Addl. Professor (8 years of Post PG Experience)</i>	<i>qualification MD/MS/ DNB in the concerned subject and as per these Regulations</i>	<i>in a permitted/approved/recogni-zed medical college/institution with three Research publications (atleast two as Associate Professor) (only original papers, meta-analysys, systematic reviews, and case 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.</i>  <i>(ii) Should have completed the Basic course in Medical Education Technology from Institution(s) designated by MCI.</i>  <i>(iii) Should have completed the Basic course in biomedical research from Institution(s) designated by MCI. 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.</i>
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14. The record also reflects that the Board of Governors in supersession of the MCI, vide a letter dated 13.12.2018, clarified that since the academic qualifications and the teaching and research experience required for the posts of Professor and Additional Professor are the same, both posts are considered equivalent by the MCI. In the writ petition, the NMC also filed a Counter Affidavit, wherein it categorically stated that the experience gained by Dr. Sheo Kumar, the Petitioner/Respondent No.5, while working as an Additional Professor at SGPGIMS, Lucknow, would be counted along with his teaching experience as a Professor towards his appointment as Principal.

15. The learned Single Judge, after considering that in SGPGIMS, the position of Associate Professor serves as a feeder cadre for the role of Additional Professor, logically concluded that the position of Additional Professor is superior to that of Associate Professor. As the expert body, namely

the NMC and its predecessor, the MCI, had already clarified that the positions of Additional Professor and Professor in a medical college are equivalent, and had explicitly stated in their affidavit that the experience gained by the Petitioner as an Additional Professor at SGPGIMS could be counted as experience for the post of Professor towards the appointment as Principal, the learned Single Judge found no reason to deviate from the view taken by the expert body. The relevant portion of the judgment is quoted below:

*"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."*

#### **SUBMISSIONS ON BEHALF OF APPELLANT/ RESPONDENT NO.5:-**

16. Sri Awadh Behari Singh, learned counsel for the Appellant/respondent No.5, vehemently submitted that the essential qualifications for selection and appointment to the post of Principal of the Government Medical College were clearly prescribed in the advertisement in accordance with the rules. He submits that the learned Single Judge committed manifest legal errors by



modifying the essential qualifications for the selection and appointment to the post of Principal at the Government Medical College. This modification was done placing reliance on letters dated 10.01.2022 and 13.12.2018 issued by the Secretary of the concerned Government Department, which equated the experience of an Additional Professor with that of a Professor. However, such reliance is not permissible under the law.

17. He further elaborated by submitting that the the rules, as laid out in the advertisement dated 22.12.2020, were clear and specific in their requirements. The Regulations 1998, which was amended up to 08.06.2017, explicitly mandates that at least five years of experience as a Professor is required for the appointment to the post of Principal. This requirement was a crucial aspect of the selection process, ensuring that candidates possess the necessary experience and expertise to lead a medical institution. By equating the experience of an Additional Professor with that of a Professor, the learned Single Judge effectively undermined the intent of these Regulations and the standards they were designed to uphold.

18. The learned counsel for the Appellant further submitted that the selection criteria and the rules of the Commission cannot be altered or changed afterwards. In this backdrop, he had placed reliance on the judgment of the Apex Court in **K.Manjusree vs State Of A.P. & Anr**<sup>7</sup>.

19. He also argued that the learned Single Judge failed to appreciate that the posts of Professor, Additional Professor, and Associate Professor are significantly different, as these three posts carry different pay scales and grade pay. Therefore, the specific requirement prescribed in the advertisement for the selection and appointment to the post of Principal of the Government Medical College, which requires five years of experience as a Professor, cannot be equated with experience as an Additional Professor. In support of his submission, he also placed reliance upon the pay scales of Professors and Additional Professors. He referred to a letter from the Director General of

<sup>7</sup> (2008) 3 SCC 512

Medical Education and Training dated 26.07.2022, which was sent to the State Government and emphasized that for appointment as a Principal, five years of experience as a Professor is mandatory. This letter does not equate the experience of a Professor with that of an Additional Professor.

20. He next submitted that it is a well-established principle of law, as upheld by the Apex Court, that the "rules of the game" cannot be changed once the game has started. He elaborated that as such the criteria for selection cannot be changed by the authorities in the middle of the selection process when it has already begun. He asserted that the learned Single Judge failed to consider this settled legal principle. He further argued that the issue of equivalent qualifications only arises when the rules explicitly provide for such consideration. In the absence of an express provision in the relevant rules, the court should not examine this question, yet the learned Single Judge wrongly treated the experience of a Professor as equal to that of an Additional Professor.

21. He lastly submitted that there are two different faculty systems in medical institutions. In the SGPGIMS, there is a four-tier faculty designation system: Assistant Professor, Associate Professor, Additional Professor, and Professor. An Additional Professor becomes eligible for promotion to Professor after four years of service. In contrast, Government Medical Colleges have a three-tier system: Assistant Professor, Associate Professor, and Professor, with no position of Additional Professor. Therefore, the requirement of five years of experience as a Professor in the advertisement should not have been equated with the experience of an Additional Professor based on the letter issued by the Secretary of the Government. This letter of clarification was in fact contrary to the rules framed by the Government itself, which the learned Single Judge failed to consider while passing the impugned order.

**SUBMISSIONS ON BEHALF OF THE RESPONDENTS:**

22. Per contra, Sri Ashok Khare, learned Senior Advocate, assisted by Sri Kunal Shah, learned counsel for the respondent No.5/ Petitioner, Dr. Sheo Kumar, vehemently opposed the instant appeal and submitted that Dr. Sheo Kumar is working at SGPGIMS, where a 4-tier hierarchical teaching system, i.e. Assistant Professor, Associate Professor, Additional Professor, and Professor, exists. He submitted that the essential qualifications for a candidate to be appointed as an Additional Professor and a Professor are the same, as the teaching work/assignment for both posts is identical.

23. Sri Khare also placed reliance on the advertisement, in which it was categorically mentioned that the essential qualifications must be recognized by the MCI; otherwise, the candidature would be canceled. He submitted that the advertisement prescribed the same academic qualifications for the posts of Professor and Additional Professor, requiring the candidate to have eight years of postgraduate experience and to possess the qualification of MD/MS/DNB in the concerned subject as per the regulations.

24. He further relied on the earlier notification issued by the Board of Governors of the MCI dated 13.12.2018, which states that, according to the MCI norms, Professors and Additional Professors are equivalent. He submitted that this clarification was issued much before the advertisement. Therefore, there is a fallacy of argument on behalf of the appellant that the learned Single Judge has in fact substituted or diluted the essential qualifications to some extent and any interpretation to incorporate within it the experience of an Additional Professor, would amount to a legislative act which was beyond the scope of the authority of the recruitment and selection body.

25. He next submitted that Dr. Sheo Kumar—the petitioner/respondent—was only provisionally selected, and his selection was subject to his furnishing the requisite certificates of experience, which he claimed based on the 4-tier hierarchical teaching system prevailing at SGPGIMS. He submitted that this

factual situation was duly modified in the Regulation, 1998 on 05.06.2017 and again on 01.11.2018. According to the MCI norms, a Professor and an Additional Professor are considered equivalent, with the further stipulation that the concerned appointing authority may prescribe norms higher than those in the 1998 Regulation.

26. In this backdrop, he submitted that since the advertisement clearly provides that the essential qualification must be recognized by the MCI; otherwise, the candidature will not be considered. Furthermore, for the posts of Professor and Additional Professor, the candidate is required to possess eight years of postgraduate experience and three years of teaching experience as an Associate Professor in a recognized medical college or institution. Normally, the corollary would be that a Professor is required to have eight years experience of teaching at the postgraduate level and also to have at least three years of experience as an Associate Professor, amounting to eight years of teaching experience in total. The 4-tier hierarchical teaching system prevailing at SGPGIMS clearly demonstrates that an Additional Professor is above an Associate Professor, and the MCI has defined the experience of a Professor as inclusive of the experience of an Additional Professor. Additionally, the NMC itself has clarified this situation.

27. He further submitted that in the present matter, the dispute is not regarding the substitution in additional qualifications. This is not a case where Dr. Sheo Kumar was lacking the necessary experience; the dispute is solely about obtaining the correct comments from the relevant authority on whether experience as an Additional Professor in a medical college would also count as experience as a Professor. In this matter, once the MCI and the NMC categorically held that the experience of a Professor includes the experience of an Additional Professor, the essential qualification and eligibility criteria for both positions are deemed the same. He vehemently submitted that the said clarification cannot be ignored and in view of the said factual situation as there is no challenge to the decision of the MCI and the NMC, learned Single

Judge has rightly held that it cannot sit in appeal to take a view contrary to what a body of experts in the field, has taken.

28. He lastly submitted that the learned Single has assigned unassailable reasoning for denying the relief to the appellant and thus the present appeal is liable to be dismissed on merit.

29. Sri Mohan Srivastava, learned Standing Counsel for the State-respondents and Sri Sayujya Singh, Advocate appearing along with Sri Vivek Kumar Singh, learned counsel for the respondent No.2 - National Medical Commission, supported the arguments advanced by Sri Ashok Khare, learned Senior Advocate, assisted by Sri Kunal Shah, learned counsel for the respondent No.5/ Petitioner.

#### **DISCUSSION AND FINDINGS:-**

30. We have given thoughtful consideration to the arguments advanced at bar by learned counsels for the respective parties, and gone through the impugned judgment and order dated 22.12.2023 passed by learned Single Judge and the material placed on record.

31. Undisputably, the qualification criteria was prescribed for the post of Principal (Allopathy) in the advertisement dated 22.12.2021 (Notification No.3 of 2020-21). From the record as well as the submissions advanced by the learned counsels for the parties at bar, the following issues beg consideration of this Court:

(a) Since the term 'equivalent qualification' was not used in the advertisement, whether the State Government could have calculated the experience of an Additional Professor as equivalent to that of a Professor and whether this amounted to changing the terms of the advertisement.

(b) Whether the rules of the game were changed after the game had

begun.

(c) Whether there was a difference in the grade pay admissible to the posts of Additional Professor and Professor, and whether the two posts could be equated even if there is difference in grade-pay.

**Issue No.(a): Since the term 'equivalent qualification' was not used in the advertisement, whether the State Government could have calculated the experience of an Additional Professor as equivalent to that of a Professor and whether this amounted to changing the terms of the advertisement.**

32. The equivalence between the posts of Additional Professor and Professor in a Medical College is prescribed in the 1998 Regulations. The underlying facts show that while State Medical Colleges operate under a 3-tier faculty designation system—comprising Assistant Professor, Associate Professor, and Professor—institutions like SGPGIMS and AIIMS follow a 4-tier system, which includes Assistant Professor, Associate Professor, Additional Professor, and Professor. Consequently, State Medical Colleges do not have the post of Additional Professor.

33. The minimum qualifications for appointment as teaching staff in a Medical Institution are governed by the Regulations, 1998 established by the Medical Council of India. According to these regulations, the qualifications required for the posts of Professor and Additional Professor in a Medical College are identical in terms of research and teaching experience. Moreover, under the Regulations, 1998, promotion to either the post of Additional Professor or Professor requires at least eight years of post-PG experience. Additionally, the post of Associate Professor is the feeder cadre for both the positions of Professor and Additional Professor.

34. The Regulations, 1998 do not consider the post of Additional Professor as the feeder cadre for the post of Professor. Instead, the Associate Professor post serves as the feeder cadre for both Professor and Additional Professor roles. An individual who has served three years as an Associate Professor is

eligible for promotion to either Additional Professor or Professor, depending on whether the institution follows a 4-tier or 3-tier faculty designation system.

35. The MCI has consistently maintained parity in the qualifications required for appointment to the posts of Additional Professor and Professor in a Medical College.

36. The Board of Governors, in supersession of the MCI, clarified in the letter dated 13.12.2018 that since the academic qualifications and the teaching and research experience for the posts of Professor and Additional Professor are the same, the MCI considers both posts equivalent. The relevant excerpt from the letter dated 13.12.2018 issued by the Board of Governors is being reproduced below:

*"This is with reference to your email dated 11.12.2018 and order dated 11.12.2018 passed by the Hon'ble 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 as Professor/ Addl. Professor in Broad Specialties [MD/MS] in Minimum Qualification for Teachers Regulations, 1998 is as under:*

<i>Posts</i>	<i>Academic Qualification</i>	<i>Teaching &amp; Research Experience</i>
<i>Professor/Addl. Professor (8 year of Post PG Experience)</i>	<i>A post in graduate qualification MD/MS the concerned subject and as per the TEQ Regulation</i>	<i>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.</i>

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

*Therefore, in so far as MCI norms are concerned Professor/ Addl. 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 Regulation, 1998.*

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

37. The NMC has also issued the Assessor's Guide. In Clause 11 of these guidelines, the issue of equating the post of Additional Professor in a four-tier faculty designation system with that of a Medical College's three-tier faculty designation system has been addressed. The NMC has clarified that the role of Additional Professor should be considered equivalent to that of a Professor. The relevant excerpt from the Assessor's Guide is provided below:

*“11. 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.”*

38. Faced with the situation described above, the Hon'ble Single Judge, in response to the Writ Petition filed by the Appellant (Writ A No. 11798 of 2021, Dr. Jitendra Singh Kushwaha v. State of U.P. and Others), issued an order on 08.10.2021, later corrected on 22.10.2021. The order directed the Director General of Medical Education and Training, Uttar Pradesh, to decide on the equivalence between the posts of Professor and Additional Professor, in consultation with the NMC.

39. Following this, the Principal Secretary of the Department of Medical Education issued an order on 10.01.2022, confirming that the posts of Additional Professor at SGPGIMS and Professor at a State Medical College are equivalent. The State Government also instructed the Public Service Commission to consider the Petitioner eligible for the post of Principal. In making this decision, the State Government considered the following factors:

- (i) The absence of the post of Additional Professor in State Medical Colleges, which operate with a three-tier faculty designation system, unlike SGPGIMS, which has a four-tier system.
- (ii) The time required for promotion to Additional Professor at SGPGIMS is equivalent to the time required for promotion to Professor at a State Medical College.
- (iii) The duties, responsibilities, and the required research and teaching qualifications for both posts are identical.



40. Additionally, in the Writ Proceedings, the NMC submitted a Counter Affidavit. In Paragraphs 5 and 33, it was clearly stated that the posts of Additional Professor and Professor are equivalent, and the experience gained by the Petitioner/Respondent No. 5 as an Additional Professor can be counted along with his experience as a Professor for the purpose of appointment as Principal. Paragraphs 5 and 33 of the Counter Affidavit filed by Rita Singh, Under Secretary, NMC, are reproduced below:

*“5. It is submitted at the outset that the petitioner is possessing teaching experience of 10 years & 6 months while working as Associate Professor, Additional Professor & Professor and out of the same he possesses teaching experience of 3 years & 10 months while specifically working as a Professor in the concerned department. As per Regulation 3.8 of the Teachers Eligibility Qualifications In Medical Institutions Regulations, 2022, a minimum of 10 years teaching experience is required for being considered for appointment to the post of Principal, out of which at least 5 years teaching experience must have been gained while working as a Professor in the concerned department. The Postgraduate Medical Education Board of the National Medical Commission after duly considering the teaching experience of the petitioner, has observed that even though the post of Additional Professor is not provided under the now repealed Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 nor under the Teachers Eligibility Qualifications in Medical Institutions Regulations, 2022. however, a large number of medical colleges in the Country have created the post of Additional Professor in various departments and previously the erstwhile MCI had also recognized the post of Additional Professor being equivalent to the post of Professor. Thus, the Postgraduate Medical Education Board of the National Medical Commission duly concluded that the teaching experience obtained by the petitioner while working as Additional Professor can be counted alongwith his teaching experience obtained while working as a Professor towards appointment as Principal.*

*33. It is further submitted that the Postgraduate Medical Education Board of the National Medical Commission after duly considering the teaching experience of the petitioner, has observed that even though the post of Additional Professor is not provided under the now repealed Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 nor under the Teachers Eligibility Qualifications In Medical Institutions Regulations, 2022, however, a large number of medical colleges in the Country have created the post of Additional Professor in various departments and previously the erstwhile MCI had also recognized the post of Additional Professor being equivalent to the post of Professor Thus, the Postgraduate Medical Education Board of the National Medical Commission duly concluded that the teaching experience obtained by the petitioner while working as Additional Professor can be counted alongwith his teaching experience obtained while working as a Professor towards appointment as Principal. Copies of letter dated 13.12.2018, wherein it can be seen that previously the erstwhile MCI had also recognized the post of Additional Professor being equivalent to the post of Professor are annexed herewith as ANNEXURE R-2/6.”*

41. The Regulations, 1998 consider the roles of Additional Professor and Professor in a Medical College to be equivalent. Both the MCI and the NMC have clarified that these posts are equivalent. They have also affirmed in their affidavit that the experience gained by the Petitioner as an Additional Professor at SGPGIMS can be counted as experience on the post of Professor for the purpose of appointment as Principal. This demonstrates that the Regulations, 1998 themselves recognize the equivalence of the two posts. The equivalence between Additional Professor and Professor in a Medical College is inherently embedded within the Regulations, 1998, implying that equivalence is implicit.

42. The absence of the term "equivalent post" in the advertisement is irrelevant, as the Regulations, 1998 framed by the MCI already establish the equivalence of these two posts.

43. The advertisement must be interpreted in consonance with the Regulations, 1998. The Hon'ble Supreme Court in **Ashish Kumar v. State of Uttar Pradesh**<sup>8</sup> (Para-27), held that if a candidate meets the requirements set out in the Regulations but those in the advertisement differ, the candidate should still be considered eligible, and the statutory requirements should prevail over the advertisement. The relevant excerpt from the judgment in **Ashish Kumar** (Supra) is provided below:

*“27. Any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. Thus, looking to the qualification prescribed in the statutory rules, the appellant fulfils the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. It is well settled that when there is variance in the advertisement and in the statutory rules, it is the statutory rules which take precedence.”*

44. The Regulations, 1998 consider the posts of Additional Professor and Professor in a Medical College to be equivalent. Therefore, any experience gained as an Additional Professor should be counted towards the required

experience for the post of Professor. If the Appellant's argument to exclude the experience gained as an Additional Professor from being considered as part of the required experience for a Professor is accepted, it would contradict the Regulations, 1998. Such an interpretation should be avoided. Notably, when the Hon'ble Single Judge issued the order dated 08.10.2021, in Civil Misc. Writ Petition No. 11798 of 2021 (Dr. Jitendra Singh Kushwaha v. State of U.P. and Others), directing the State Government to decide on the equivalence of the two posts, i.e. Professor and Additional Professor, neither the Appellant nor the Commission objected. It is only after the State Government determined the equivalency in favour of the Petitioner that the Appellant is attempting to change its position. This shift is not permissible, particularly when no objections were raised before the Hon'ble Single Judge when the direction for determination of equivalence was issued, and especially since the Regulations, 1998 themselves recognize the equivalency between the posts of Additional Professor and Professor in a Medical College.

45. It is trite law that when an expert body, after considering the relevant Regulations, working conditions, and teaching experience, decides on equivalence, this decision should not be interfered with unless there is a compelling reason to do so. This principle is supported by the judgment of the Hon'ble Supreme Court in **Anand Yadav v. State of U.P.**<sup>9</sup>, (Paras-28, 31, and 32). In this case, the Supreme Court held that in matters of determining equivalence, the appropriate regulatory authorities responsible for setting qualifications for the posts are the proper entities to make such decisions. Once these authorities have made a decision on equivalence, it should not be challenged by others. The Supreme Court also emphasized that the employer is best positioned to decide who should be appointed, and when this decision is supported by an expert body, it should be respected and not interfered with. The relevant portion of the Supreme Court's judgment in **Anand Yadav** (Supra) is reproduced below:

9 (2021) 12 SCC 390

28. We must, at the inception, express our reservation about the manner in which the writ petition was filed and a decision was taken in the impugned order of the High Court without even calling upon the relevant authorities i.e. the UGC and NCTE to put forth their stand. The first authority is undisputedly the one to determine and specify the nomenclature of degrees, while the second is the authority of teacher education. Whatever has been the earlier position, as is sought to be relied upon, of the Gujarat High Court [*Puma Gunvantaray Vyas v. State of Gujarat, 2016 SCC OnLine Guj 10038*], the same is no more in doubt. A decision based in the absence of authorities concerned is likely to and has caused confusion.

31. The question of equivalence, as submitted by Respondent 4 UGC was to be left to NCTE. It is in view thereof that NCTE was added as a party (Respondent 5) and has, once again, put forth its position quite unequivocally. NCTE has drawn a distinction between the two degrees to the extent that while MA (Education) is a degree in the discipline of Education, the MEd degree is a practitioner's degree. Reference has also been made to a committee constituted in pursuance of the impugned judgment, which is an expert committee. In view of the recognition of the MEd programme of one-year duration, in order to acquire an MEd degree, one has to spend two years after the first degree because for an MEd degree, a BEd degree is mandatory. It is in these circumstances a conclusion was reached that, from the point of view of duration and curricular inputs, MEd qualifies itself as a Master's programme in Education and is even recognised by the UGC and NCTE as such. In a sense this puts to rest one of the controversies raised by Respondent 3 i.e. initially MEd was a one-year programme, and only subsequently converted into a two-years programme in 2015, as this very issue has been examined by an expert committee of NCTE, and NCTE concluded in favour of the appellants. There is also a categorical statement in the last paragraph of the counter-affidavit of NCTE to the effect that the MEd is a Master's degree recognised by apex bodies like the UGC and NCTE for appointment as Assistant Professor in Education and they are also eligible for the NET/SLET/JRF.

32. We may also notice another important aspect i.e. the employer ultimately being the best judge of who should be appointed. The choice was of Respondent 2 who sought the assistance of an expert committee in view of the representation of some of the appellants. The eminence of the expert committee is apparent from its composition. That committee, after examination, opined in favour of the stand taken by the appellants, and Respondent 2 as employer decided to concur with the same and accepted the committee's opinion. It is really not for the appellants or the contesting respondent to contend how and in what manner a degree should be obtained, which would make them eligible for appointment by Respondent 2.”

46. The Appellant's argument that counting the Petitioner's experience as an Additional Professor as equivalent to experience as a Professor would effectively alter the terms of the advertisement and grant an undue relaxation to the respondent No.5/ petitioner was rightly rejected by the Hon'ble Single Judge. The learned Single Judge observed that since the Regulations 1998 recognized equivalence between these positions and the expert body, after reviewing the relevant Regulations, interpreted the role of Professor as

equivalent to that of Additional Professor, this interpretation would not constitute a change to the advertisement's terms by any stretch of imagination. As the Regulations 1998, framed by the MCI, duly recognize the equivalence of the roles of Additional Professor and Professor in a Medical College, and this equivalence has been validated by the expert body, the judgment of the Hon'ble Single Judge is justified and cannot be questioned, therefore, **the Issue No.(a) is accordingly answered.**

**Issue No. (b) Whether the rules of the game were changed after the game had begun.**

47. Regarding the second submission placed by the Appellant/ respondent No.5, wherein it was claimed that equating the experience of an Additional Professor in a Medical College with that of a Professor would effectively change the rules after the game had started. It is to be noted that this argument is fundamentally flawed, as the determination of the equivalency between the two posts is merely clarificatory in nature. The Hon'ble Single Judge observed that the orders dated 10.01.2022 and 30.05.2022, issued by the State Government, which treated the posts in question as equivalent, were consistent with the notifications, guidelines, and clarifications issued by the expert body, i.e. the MCI and its successor - the NMC and were merely clarificatory in nature. The observations made by the learned Single Judge is provided below:

*“24. 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.”*

48. Additionally, when a candidate participates in a selection process, he/she rightfully expects the recruitment agency to follow the legal requirements. The need for clarification by the State Government arose

because the Respondent Commission was not recognizing or considering the inherent equivalence prescribed in the Regulations, 1998. The orders dated 10.01.2022 and 30.05.2022 issued by the Principal Secretary of the Department of Medical Education, which clarified that the posts of Professor and Additional Professor in a Medical College are equivalent, simply acknowledged an existing situation that was already legally established in the Regulations, 1998. These orders from the State Government did not create any new rights but merely clarified a right that the Service Commission had not been properly acknowledging.

49. Since the clarification by the State Government that the two posts are equivalent was not based on any new development that occurred after the advertisement was issued, it does not amount to changing the rules after the process had begun. Instead, it is an interpretation of the rules during the ongoing process. In this regard, the Hon'ble Supreme Court's decision in **Praveen Kumar C.P. v. Kerala Public Service Commission**<sup>10</sup>, (Para-26), is relevant. The pertinent part of the Supreme Court's judgment in **Praveen Kumar C.P.** (supra) is provided below:

*“26. Whether a GO would have prospective effect or relate back to an earlier date is a question which would have to be decided on the basis of text and tenor of the respective orders. The GOs which declared appellants' degrees to be equivalent to those required as per the applicable notifications were not general orders but these two orders were person specific, relating to the two appellants. Once the Gos specifically declared that their B.Ed. degrees were equivalent to the designated subject which formed part of the employment notification, the GOs in substance have to be interpreted as clarificatory in nature and these cannot be construed to have had elevated the status or position of the degree they already had after the declaration was made in the GOs. The subject GOs only recognised an existing state of affairs so far as the nature of the degrees were concerned and did not create fresh value for the degrees which the appellants possessed. Though these equivalent orders were not in existence on the dates of issue of employment notifications, the GOs in substance recognize such status from the dates of obtaining such degrees. The GOs do not reveal any intervening circumstances which could be construed to imply that the respective degrees acquired the equivalent status because of such circumstances occurring subsequent to grant of their B.Ed. degrees. The aforesaid Notes to Clause 7 of the employment notifications postulated disclosure of the number and date of the orders on equivalence. But the GOs to which we have referred treat the equivalency to be operating on the dates of obtaining such degrees. Thus, the defect, if any, on disclosure requirement, shall stand cured on*

10 (2021) 17 SCC 383

*issue of the University orders followed by the GOs. The GOs also specify the context in which these were issued and refer to the appellants being included in the list of KPSC. This being the case, we do not think treating the appellants' degrees as equivalent to those required under the applicable notifications by the GOs issued in the year 2019 would result in change in the rules of the game midway. At best, it can be termed as interpreting the rules when the game was on, figuratively speaking. Such a course would, in our opinion, be permissible.”*

50. Accordingly, as the orders issued by the State Government, which deemed the posts equivalent, are merely clarificatory and do not alter the rules after the game has begun; instead, they serve as an interpretation of the rules while the game is in progress, therefore, **the Issue No.(b) is answered accordingly.**

**Issue No.(c) Whether there was a difference in the grade pay admissible to the posts of Additional Professor and Professor, and whether the two posts could be equated even if there is difference in grade-pay.**

51. While making this submission, learned counsel for the Appellant has argued that since the grade pay for a Professor in a Medical College under the Sixth Pay Commission was Rs.10,000/- and the grade pay for an Additional Professor was Rs.9,500/-, the State Government could not have treated the posts as equivalent. This contention of the Appellant is erroneous. The State Government determined the equivalence of the posts of Additional Professor and Professor after considering that the teaching experience required for both posts is identical, the nature of work and responsibilities are the same, and the duration for a teacher to become a Professor in a Government Medical College and an Additional Professor in SGPGIMS is equal. Given these factors, the difference in grade pay is insignificant.

52. It is worth mentioning that although the State Government's order dated 10.01.2022 clearly stated that the Petitioner met the eligibility conditions, the Commission sought clarification from the State Government regarding the equivalence of the posts of Additional Professor and Professor, considering the

difference in grade pay. The State Government, in its order dated 30.05.2022, reiterated that since the qualifications, nature of duty, and work assigned to the posts of Additional Professor and Professor in a Medical College were the same, the difference in grade pay would not affect the equivalence. The relevant portion of the Government order dated 30.05.2022 is reproduced below:

क्रम	लोक सेवा आयोग की पृच्छा	आख्या
2	शासन के पत्र दिनांक 23.03.2022 के अनुसार डा० शिव कुमार एडिशनल प्रोफेसर ग्रेड पे रू० 9500/- पर दिनांक 01.07.2013 से 30.08.2017 तक कार्यरत रहे एवं प्रोफेसर ग्रेड पे० रू० 10500/- पर दिनांक 01.07.2017 से कार्यरत है, इस संबंध कृपया यह भी अवगत कराने का कष्ट कि ग्रेड पे० रू० 9500/-, ग्रेड पे० रू० 10,000/- या ग्रेड पे० रू० 10500/- के पदों में समतुल्यता स्थापित है।	एस०जी०पी०जी०आई०, लखनऊ वेतन/भत्तों के संबंध में एम्स से समकक्षता प्रदान की गयी है। एस०जी०पी०जी०आई० लखनऊ में 04 सोपान तथा राजकीय मेडिकल कालेजों में 03 सोपान की व्यवस्था के दृष्टिगत यद्यपि ग्रेड पे में समतुल्यता नहीं है किन्तु अध्यापन अनुभव, कार्य एवं दायित्व में पूरी समानता है।

53. In the case of **Sub-Inspector Rooplal and Another v. Lt. Governor through Chief Secretary<sup>11</sup>, (para-17)**, the Hon'ble Apex Court emphasized that differing pay scales do not inherently render two posts "non-equivalent." The Apex Court stated that equivalence should be assessed based on the similarities in the nature and duties of the positions, as well as the minimum qualifications required for both roles. This perspective is also in consonance with an earlier judgment of Apex Court in **Vice Chancellor L.N. Mithila University v. Dayanand Jha<sup>12</sup>**. The relevant portion of the judgment of **Sub-Inspector Rooplal and Another** (supra) is provided below:

*"17...Equivalency of two posts is not judged by the sole fact of equal pay. While determining the equation of two posts any factors other than "pay" will have to be taken into consideration, like the nature of duties, responsibilities, minimum*

11 (2000) 1 SCC 644

12 (1986) 3 SCC 7



*qualification etc. It is so held by this Court as far back as in the year 1968 in the case of Union of India v. P.K. Roy [AIR 1968 SC 850 : (1968) 2 SCR 186]. In the said judgment, this Court accepted the factors laid down by the Committee of Chief Secretaries which was constituted for settling the disputes regarding equation of posts arising out of the States Reorganisation Act, 1956. These four factors are: (i) the nature and duties of a post; (ii) the responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. It is seen that the salary of a post for the purpose of finding out the equivalency of posts is the last of the criteria. If the earlier three criteria mentioned above are fulfilled then the fact that the salaries of the two posts are different would not in any way make the post "not equivalent". In the instant case, it is not the case of the respondents that the first three criteria mentioned hereinabove are in any manner different between the two posts concerned. Therefore, it should be held that the view taken by the Tribunal in the impugned order that the two posts of Sub-Inspector in BSF and Sub-Inspector (Executive) in the Delhi Police are not equivalent merely on the ground that the two posts did not carry the same pay scale, is necessarily to be rejected. We are further supported in this view of ours by another judgment of this Court in the case of Vice Chancellor, L.N. Mithila University v. Dayanand Jha, (1986) 3 SCC 7 wherein at para 8 of the judgment, this Court held:*

*"Learned counsel for the respondent is therefore right in contending that equivalence of the pay scale is not the only factor in judging whether the post of Principal and that of Reader are equivalent posts. We are inclined to agree with him that the real criterion to adopt is whether they could be regarded of equal status and responsibility. The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts."*

*18. Therefore, in our opinion, the finding of the Tribunal that the posts of Sub-Inspector in BSF and Sub-Inspector (Executive) in the Delhi Police are not equivalent, is erroneous, and the same is liable to be set aside."*

54. The Appellant has not disputed the findings of the State Government qua the identical eligibility conditions, teaching and research experience, and the nature of work associated with both posts. Furthermore, the Regulations, 1998 for faculty positions in Medical Colleges establish equivalency between the roles of Professor and Additional Professor. This equivalency is also acknowledged by the NMC, which recognizes that the qualifications and responsibilities for both posts are the same. As the time required for a teacher to advance to Professor in a Government Medical College is equivalent to that for becoming an Additional Professor at SGPGIMS, the State Government has rightly clarified that both posts are equivalent. Therefore, the Appellant cannot propose an alternative interpretation that contradicts the conclusions reached

by both the expert body and the State Government. Accordingly, as once the State Government has determined the equivalence of the posts, considering the similarity of qualifications, teaching experience, work nature, and responsibility, the difference in grade pay between the two posts becomes insignificant, therefore, **the Issue No.(c) is answered accordingly.**

55. Since the learned Single Judge had already examined and discussed the judgments cited by the counsel for the Appellant/Respondent No.5 in paragraphs 26 to 29 of the impugned judgment and order dated 22.12.2023, and found them distinguishable based on the facts of the case , which we agree with, hence we see no need to revisit that analysis here.

#### **CONCLUSION:**

56. In view of the aforesaid discussion, all the submissions presented by the counsel for the Appellant/Respondent No. 5 stand rejected on the ground that the MCI and NMC duly considered the posts of Additional Professor and Professor to be equivalent. The clarification of the State Government on equivalence was an interpretation of existing rules, which do not amount to changing the rules, and the difference in pay grade alone does not make the posts non-equivalent if other factors are identical, such as duties and qualifications. As such, we do not find any infirmity in the impugned judgment and order dated 22.12.2023, passed by the learned Single Judge, which may warrant interference.

57. Accordingly, the **special appeal sans merit and is dismissed.**

**Order Date :- 02.09.2024**  
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