

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.4050 OF 2024 (S-RES)

BETWEEN:

...PETITIONER

(BY SRI ARUN SHYAM, SENIOR ADVOCATE FOR
SRI SUYOG HERELE E, ADVOCATE)

AND:

REPRESENTED BY SLO

...RESPONDENTS

(BY SRI S.B.TOTAD, ADVOCATE FOR R1 & R2;
SRI VINAYA KEERTHI, ADVOCATE FOR R3)

THIS WP IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE OFFICIAL MEMORANDUM DTD 31.01.2024 IN NO. SIMS/ADALITA-1/SE.NI/2023-24/2659 PASSED BY THE R-1 PLACING R-3 AS IN-CHARGE HEAD OF THE DEPARTMENT, ENT DEPARTMENT, SHIVAMOGGA INSTITUTE OF MEDICAL SCIENCES (PRODUCED AT ANNEXURE-A) AND ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.03.2024, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned petition is filed assailing the impugned Official Memorandum dated 31.01.2024 issued by respondent No.1 as per Annexure-A, whereby respondent No.3 is appointed as in-charge Head of Department (HOD)

of ENT Department, Shivamogga Institute of Medical Sciences.

2. The case on hand pertains to assignment of dual roles, specifically the combination of position of Medical Superintendent and Head of Department, ENT within respondent No.1-Institution as raised by the petitioner. The petitioner's grievance is that respondent No.3 who is already holding the post of Medical Superintendent cannot occupy the position of Head of Department in terms of 3.7 Regulation of National Medical Commission (NMC).

3. The assignment of dual roles to respondent No.3 who is now called upon to serve as both Medical Superintendent and in-charge HOD of ENT Department raises significant concerns regarding potential conflict of interest, compromised patient care and diminished educational opportunities for students. The respondent No.1 while appointing respondent No.3 as in-charge HOD

has clearly contravened Regulation 3.7 of NMC which clearly lays an embargo on a Medical Superintendent in occupying the position of Head of Department.

4. Regulation 3.7 of National Medical Commission, reads as under:

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

5. On reading the above said Regulation, this Court would find that as per National Medical Commission norms, the Medical superintendent cannot be Head of Department of a clinical department. The very object of laying an

embargo against dual roles is clearly intended to avoid conflict of interest. The role of Medical Superintendent involves administrative responsibilities, overseeing the overall functioning of the Hospital and ensuring compliance with Regulations. Having respondent No.3 as both an Administrator and Head of Clinical Department could compromise the impartiality and effectiveness of decision making in both the areas. The role of Medical Superintendent in the Hospital typically involves administrative duties such as managing budgets, staffing, facilities and ensuring compliance with regulations and policies. Medical Superintendent is also responsible for the smooth operation of the Hospital as a whole focusing on aspects like infrastructure, finance and over all organizational efficiency.

6. On the other hand, Head of the Department in the Clinical Department such as Surgery, Medicine, Pediatric, ENT, is responsible for overseeing the medical

and clinical aspects of that specific department. This includes supervising medical staff, ensuring quality patient care, setting departmental policies and participating in clinical decision making.

7. Therefore, the very object of Regulation 3.7 is intended to see that same person cannot serve both as Medical Superintendent and HOD of clinical department. The above said Regulation is also intended to have two separate channels for administrative actions and clinical focus. The Medical Superintendent's primary focus is on administrative task while HOD focuses on clinical matters within their specific department. Balancing both roles effectively can be challenging as they require different skill sets and priorities. If a same person holds both the posts, a conflict may arise while making decisions that affect both the Hospital as a whole and a specific clinical department. The embargo also addresses the main concern of Medical institution where quality of patient care is a top priority.

Separating the roles ensures that HOD can concentrate only on clinical needs of their department including patient care, staff supervision and maintaining high medical standards.

8. This Court has to also bear in mind that dual role of Medical Superintendent and Head of Department can potentially affect students in various ways. If HOD is also responsible for administrative duties as a Medical Superintendent, it may detract from his ability to focus on educational responsibilities within the Department. This could impact the quality of teaching, supervision of students and availability of academic support and mentorship. Students often rely on HODs' for guidance and supervision during clinical rotations and training. If the HODs' attention is divided between administrative and clinical duties, it could affect the availability and quality of supervision which is crucial for students learning experience and development of clinical skills. Overall, the potential impact on students highlights the importance of maintaining clear roles and

responsibilities within medical institutions to ensure that students receive necessary support, supervision and educational opportunities for their training and development as future health care professionals.

9. It is quite shocking to take cognizance of the stand taken by respondent No.1 to overcome the infraction of 3.7 Regulation while issuing the in-charge order in favour of respondent No.3. The respondent No.1-institution cannot claim that position of Medical Superintendent is not sanctioned as a justification for allowing the Medical Superintendent to hold the post of HOD contrary to 3.7 Regulations of NMC. NMC norms are established to ensure the efficient and effective functioning of health care institutions, uphold standards of patient care and maintain the quality of medical education. These norms often mandate the separation of administrative and clinical roles within health care institutions to avoid conflict of interest and ensure transparency and accountability. If the position

of Medical Superintendent is not officially sanctioned, it does not automatically grant permission for the Medical Superintendent to hold an additional charge of HOD. The claim of respondent No.1 that position of Medical Superintendent is not officially sanctioned and therefore, Medical Superintendent is permitted to hold the post of Head of Department cannot be acceded as it is clearly contrary to the above said Regulation of NMC norms.

10. In the matter of appointment of Medical Superintendent as the Head of Department, it is brought to the attention of this Court that such appointment is in contravention of Regulation 3.7. 3.7 of NMC Regulations explicitly states that Medical Superintendent cannot head a Department. The institutes claim that the post of Medical Superintendent is not sanctioned in an attempt to justify this appointment, cannot be accepted as a valid reasoning. The lack of sanction for a position does not negate the

regulations set forth by NMC regarding the qualifications and responsibilities of departmental heads.

11. In the light of findings recorded supra, this Court is of the view that appointment of respondent No.3 who is already holding the post of Medical Superintendent as HOD of ENT is null and void as it violates Regulation 3.7 of NMC Regulations. The Institute is instructed to rectify this violation immediately by appointing a qualified individual with requisite expertise and experience as the Head of the Department of ENT.

12. In the light of the foregoing reasons, this Court proceeds to pass the following:

ORDER

- (i) The writ petition is allowed;
- (ii) The impugned Official Memorandum dated 31.01.2024 passed by respondent No.1 as per Annexure-A in appointing respondent No.3

as an in-charge HOD is declared as illegal and the same is hereby quashed;

(iii) The respondent No.1 is hereby directed to comply with NMC norms regarding separation of administrative and clinical roles within respondent No.1-Institution;

(iv) The respondent No.3 shall refrain from assuming additional clinical responsibilities such as serving as an HOD of ENT Department contrary to NMC norms;

(v) The respondent No.1-Institution without deviating from NMC norms shall revisit the issue relating to appointment of HOD and take appropriate action strictly adhering to the established law, regulation and norms of NMC;

(vi) Pending I.As.', if any, does not survive for consideration and stands disposed of.

**Sd/-
JUDGE**

CA