



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 11TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 105637 OF 2023 (S-RES)

BETWEEN:

DR UDAY MULGUND S/O NARAYAN,

... PETITIONER

(BY SRI. V.M. SHEELVANT, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
REPRESENTED BY ITS UNDER SECRETARY,
DEPARTMENT OF MEDICAL EDUCATION,
M S BUILDING, BENGALURU.
2. HAVERI MEDICAL INSTITUTES OF SCIENCES,
HAVERI 581110,
BY ITS CHAIRMAN OF GOVERNING COUNCIL.
3. THE DIRECTOR OF MEDICAL EDUCATION,
BENGALURU MEDICAL COLLEGE CAMPUS,
FORTE, BENGALURU-01.
4. DR. PRADEEP KUMAR M.V.,

... RESPONDENTS

(BY SRI. M.M. KHANNUR AGA FOR R1 & R3;
SRI. V.R. SARATHY & SRI. SHARANABASAARAJ, ADVOCATE FOR R4;
RESPONDENT NO.2 - SERVED.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE
CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF
CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION
AND QUASH THE NOTIFICATION BEARING NO MED 501 MMC 2020 DATED
12/9/2023 PASSED BY THE 1ST RESPONDENT PRODUCED AT ANNEXURE-D
IN THE INTEREST OF JUSTICE AND EQUITY.



THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this court calling in question an order dated 12.09.2023 by which the petitioner is repatriated to his original Post of Professor of the Karnataka Institute of Medical Sciences (KIMS for short) from the Post of Director that he was appointed to.

2. Heard the learned counsel Shri V.M. Sheelavant appearing for the petitioner; learned AGA Shri M.M. Khannur appearing for respondent Nos.1 & 3; & Shri V.R. Sarathy & Shri Sharanabasavaraj appearing for respondent No.4.

3. Facts adumbrated are as follows:

The petitioner is appointed as a Lecturer in KIMS, Hubballi on 25.02.1999. At intermittent intervals, the petitioner was promoted to higher echelons of Office, first as an Assistant Professor, in the year 2005, next as an Associate Professor, in the year 2010 and later as a Professor with effect from 2019. After about three years of serving as a Professor in KIMS, Hubballi, he is deputed as Special Officer for the establishment of new Medical College at Haveri. It is then, he is appointed on



12.07.2022 as a Director of Haveri Institute of Medical Sciences (Institute for short) for a period of four years or until further orders. The petitioner assumes charge and was functioning as a Director of the Institute.

4. On 12.09.2023, the fourth respondent is posted to the place of the petitioner and the petitioner is sent back to his Post of the Professor at KIMS, Hubballi. This drives the petitioner this Court in the subject petition.

5. This Court, while entertaining the petition had granted an interim order of stay on 13.09.2023, which reads as follows:

"Heard the learned counsel Shri V.M. Sheelvant appearing for the petitioner.

The petitioner calls in question an order dated 12.09.2023 by which the petitioner is now sought to be ousted as a Director of the Haveri Institute of Medical Sciences. In terms of the By-laws of the Institute, the State has power to appoint the first Dean cum Director and the next Dean cum Director would be by way of direct recruitment. The petitioner is appointed as the first Dean cum Director of the Haveri Institute of Medical Sciences in terms of the order dated 12.07.2022. Therefore, he has the tenure in terms of the By-laws of four years or superannuation whichever would be earlier. The order is in effect the petitioner would be removed from the post of a Director. This prima facie is unsustainable.

Learned counsel Shri Santosh B.Malagoudar representing the present incumbent would seek to defend



the action contending that it was a Adhoc appointment or incharge arrangement that was made for appointing the petitioner as a Director, but alas it is not. As the notification of appointment issued by the State is appointing him for a period of four years in terms of the By-laws. It is neither Adhoc nor incharge or a temporary appointment for a period of four years. Therefore, the present impugned action of appointing another person i.e., respondent No.4 is undoubtedly contrary to law unless it becomes justifiable by the State on the next date of hearing.

There shall be an interim order of stay of the order impugned, till the next date of hearing.

*List the matter on **09.10.2023** in the fresh matters list.*

Learned HCGP is directed to accept notice for respondent Nos.1 & 3.

Issue emergent notice to respondent No.2.

Learned counsel Shri Santosh B.Malagoudar is directed to accept notice for respondent No.4."

6. The respondent whose transfer was stayed, filed his statement of objections and therefore with the consent of the parties, the matter was taken up for its final disposal.

7. Learned counsel Shri V.M. Sheelavant appearing for the petitioner would strenuously contend that the appointment of the petitioner is by the Government. The services of the petitioner put together he would come within the ambit of being qualified to hold the Post of Director. The conditions of appointment qua qualification would become necessary only for



direct recruitment and not to an appointee gets appointed at the hands of the State Government in terms of the Rules. He would seek that the transfer order is violative of the order that appoints the petitioner as it was for a period of four years or until further orders.

8. On the other hand, learned counsel Shri V.R. Sarathy taking this court through the statement of objections and the documents appended to the said objections would seek to contend that the power of first appointment the Government has, but that cannot be without qualification. It is an admitted fact that the petitioner is not qualified to hold the post of Director in terms of the Rules / Bylaws of the Institution as also the Regulations of the MCI for teaching personnel.

9. Learned AGA would also toe the lines of the learned counsel Shri V.R. Sarathy in seeking dismissal of the petition on the score that the petitioner is not qualified to hold the post.

10. Learned counsel for the petitioner would join the issue by contending that the order of transfer does not speak of the petitioner not being qualified to hold the post of Director, it is a plain and simple order of transfer, which is unsustainable.



11. I have given my anxious consideration to the submissions made by the learned counsel and have perused the material available on record.

12. The afore-narrated facts are not in dispute. Haveri Institute of Medical Science takes birth in the month of February-2022. The petitioner is appointed as a Director on 12.07.2022, as a first Director to the newly born Institute. Whether the petitioner's appointment is in tune with the Rules, bylaws and Regulations of the MCI is what is required to be considered. To consider, I deem it appropriate to notice the Rules and Bylaws. The service conditions or the recruitment and other Traits of recruitment is governed by the Haveri Institute of Medical Sciences, Haveri Rules & Regulations, 2017.

13. Regulation 18 deals with the appointment of Dean and Director, it reads as follows:

"18. Appointment of Dean and Director: (1) The Government shall appoint the First Dean cum Director, after getting satisfied as to his /her qualifications and eligibility specified in clause (3) below for a maximum period of 4 years or superannuation whichever is earlier.

(2) Consequent on superannuation, resignation, removal, death or censation of the term of Dean



cum Director, appointment can be made temporarily for a period not exceeding six months to the said post by the Governing Council till regular appointment is made by the Governing Council.

- (3) The Governing Council shall appoint the Dean cum Director through a selection process. Such appointments shall be on the recommendations of the selection committee in accordance with the provisions of the byelaws. The term of the Dean cum Director so appointed shall be for a period of 4 years. There shall be no extension of the term.**
- (4) *The Dean cum Director to be appointed must have 10 years of teaching experience as Professor or Associate Professor out of which at least five years as Professor in the particular department. Preference shall be given to Professors who have worked as Head of the Department. He shall possess minimum of 5 years of Administrative Experience.*
- (5) *The Dean and Director shall not be removed from his office except by an order of the Governing Council passed on the ground of willful omission or refusal to carryout the provisions of the Bylaws or abuse of powers vested in him and in consideration of the report of an enquiry ordered by it under clause (6).*
- (6) *For the purpose of holding an enquiry under this clause, the Governing Council shall appoint a person not below the rank of District Judge. The enquiry authority shall hold the enquiry after giving an opportunity to make representation by the Dean and Director and shall submit a report to Governing Council and the Governing Council shall consider the report within three months and pass suitable orders including imposition of any suitable penalty.*



Provided that where on such enquiry it is proved that Dean and Director has misused any of powers, the State Government may also withdraw any or all of the powers that are exercised by the Director cum Dean and may confer the same on an officer of Medical Education Department not below the rank of Joint Secretary to Government till final orders are passed on such enquiry."

14. Regulation 18(1) permits the Government to appoint the first Dean cum Director after getting satisfied as to his / her qualifications and eligibility specified in Clause (3). The Dean cum Director who is appointed therefore cannot be appointed de hors qualification. The qualification prescribed for appointment to the Post of Director is in terms of the minimum qualification of Teachers in the Medical Institution Regulations of the Medical Council of India. The regulations insofar as it pertains to the Director, reads as follows:

*REQUIREMENTS OF ACADEMIC QUALIFICATIONS,
TEACHING AND RESEARCH EXPERIENCE.*

<i>Post</i>	<i>Academic qualifications Teaching</i>	<i>Teaching / Research Experience</i>
<i>Principal / Dean / Director of Medical Institution.</i>	<i>Should possess the recognized postgraduate medical qualification and other academic qualification from a recognized institution with a minimum of ten years' teaching experience as Professor/ Associate Professor/</i>	



	<i>Reader in a medical college / Instt. Out of which atleast five years should be as Professor in a department. Preference for these appointments may be given to the Heads of the Departments.</i>	
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15. For an appointment to the Post of Dean cum Director one should have the minimum of ten years of teaching experience as Professor, Associate Professor or reader, out of which atleast five years **"should be as a Professor"** in any Department. If the qualification of the petitioner is considered on the bedrock of what is prescribed by MCI or what is found in the Rules and Regulations, the petitioner would not satisfy the qualification as is necessary (supra). The petitioner does have ten years of teaching experience, but lacks minimum five years out of that, as Professor. As the petitioner is appointed as Professor only in the year 2019 and is yet to complete five years falling short of one year as Professor for him to become eligible to be appointed as a Director of the Institute. The Governments' right to appoint the Dean cum Director of an Institution which is newly born, would not mean that such Dean cum Director, who would be appointed has no qualification to hold the post. The qualification cannot be given a gobye on any circumstance



whether it is for the appointment of first Dean cum Director or the subsequent Dean cum Director. The only difference between the first Dean cum Director and the subsequent Dean cum Director is that the first Dean cum Director would be appointed without calling for applications, from the eligible candidates and the subsequent Dean cum Director would be appointed by calling for applications from the eligible candidates as a regular process of recruitment. In the light of the petitioner falling short of qualification of five years as Professor, in the considered view of the Court is ineligible to hold the post of Director of the Institute.

16. For the aforesaid reasons, the following:

ORDER

The petition lacking in merit stands rejected.

Sd/-
JUDGE

Vnp*
List No.: 1 Sl No.: 126