

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**

ORIGINAL APPLICATION NO.60/215/2020

ORDER RESERVED ON 08.04.2021

DATE OF ORDER: 23.04.2021

CORAM:

HON'BLE SHRI R.N. SINGH, MEMBER (J)

(On video conference from Central Administrative Tribunal, Principal Bench at New Delhi)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

(On video conference from Central Administrative Tribunal, Bangalore Bench at Bangalore)

Dr. Sushumna Sood wife of Sh. Vikram Sood age 55 years working as Prof., Department of Biochemistry, Government Medical College and Hospital (GMCH), Sector: 32, Chandigarh-160030 (resident of House NO.1153-B, GMCH Campus, Sector-32, Chandigarh-160030. (Group A)

.....Applicant

(By Advocate Shri D.R. Sharma – through video conference)

Vs.

1. Chandigarh Administration through the Administrator, Union Territory, Chandigarh, Sector: 6, Punjab Raj Bhawan, Chandigarh-160001.
2. The Principal Secretary, Department of Medical Education & Research, Chandigarh Administration, Sector-9, U.T. Secretariat, Chandigarh-160009.
3. The Director Principal, Government Medical College & Hospital, Sector: 32-B, Chandigarh-160030.
4. Dr. Jasbinder Kaur, Prof.& Head, Department of Biochemistry, Government Medical College & Hospital, Sector: 32-B, Chandigarh-160030.

.....Respondents

(By Advocate Shri Shobit Phutela – through video conference)

O R D E R**PER: RAKESH KUMAR GUPTA, MEMBER (A)**

1. The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“The respondents be directed to appoint the applicant as Internal Examiner on rotation basis and as per her turn for the MBBS First Prof examinations which are held on yearly basis in terms of the provisions of “Medical Council of India Regulations on Graduate Medical education 2012” and not to appoint the juniors and ineligible as Internal Examiner, in the interest of justice and also for the examination scheduled to be held in August/September, 2020.”

2. The applicant in her pleadings through the learned counsel Shri D.R. Sharma, has averred as follows:

- a. The applicant joined service on 24.07.1998 as Senior Lecturer in the Department of Biochemistry, Government Medical College and Hospital (GMCH), Chandigarh. The applicant possesses qualification of M.Sc. (Hons.) (Biochemistry) from Punjab University, Chandigarh and Ph.D. (Biochemistry) from PGIMER, Chandigarh. The qualification of M.Sc. (Hons) (Biochemistry) Degree is equivalent to that of M.Sc. (Medical Biochemistry) for the purpose of Higher studies and employment. This has been certified by Punjab University, Chandigarh through its letter dated 29.01.2014(Annexure-A1). The service particulars of the applicant in brief are as follow:

Position	Duration	Nature of Duties	Institute
Senior Research Fellow in the Deptt. of Experimental Med. & Biotechnology	1.4.93 to 31.12.93	Research	PGIMER, Chandigarh
Research Associate in the Deptt. of Experimental Med. & Biotechnology	1.1.94 to 14.2.96	Teaching & Research	PGIMER, Chandigarh
Senior Demonstrator in the Deptt. of Experimental Med. & Biotechnology	15.2.96 to 23.7.98	Teaching & Research	PGIMER, Chandigarh
Assistant Prof. in the deptt. of Biochemistry, through UPSC	24.7.98 to 20.5.2010	Teaching & Research	GMCH-32 Chandigarh
Associate Prof. in the deptt. of Biochemistry, through UPSC	21.5.2010(F.N) to date	Teaching & Research	GMCH-32 Chandigarh
Associate Prof. in the deptt. of Biochemistry, under Career Advancement Scheme (CAS)	24.7.2003 to 20.5.2012	Teaching & Research	GMCH-32 Chandigarh
Professor in the deptt. of Biochemistry, under Career Advancement Scheme (CAS)	21.5.2012 (F.N.) to date	Teaching & Research	GMCH-32 Chandigarh

b. In the seniority list of Department of Biochemistry, the applicant is at Sl.No.2 as Professor, with Dr. Jasbinder Kaur, (respondent No.4) as Professor & Head of the Department.

c. As per the existing rules concerning the Appointment of Examiners, the relevant extract (Clause 'h') is as follows:

“h. Except Head of the Department of subject concerned in a college/institution, all other with the rank of Reader or equivalent and above with requisite qualifications and experience shall be appointed Internal Examiners by rotation in their subjects; provided that where there are no posts of Readers, than an Assistant Professor of 05 years (total 08 years after MD/MS) standing as Assistant Professor may be considered for appointment as examiner..”

d. A bare perusal of the above would reveal that a person with the rank of Reader or equivalent i.e. Associate Professor, as in the present case, can be appointed as Internal Examiner by rotation in their subjects. As per these Regulations, 2012, Internal Examiner has to be appointed by rotation amongst the Associate Professors in the department of Bio Chemistry. There are two Associate professors in the Department i.e. applicant who is senior and the other one is Dr. Shivani Jaswal. There is also one Asst. Professor namely Dr. Seema Gupta.

e. In the previous two examinations, i.e. MBBS First Prof (Batch 2013) which took place in July 2014, and second examination of MBBS First Prof (Batch 2014) which took place in July, 2015, both the times, Dr. Shivani Jaswal, Associate Professor was appointed as Internal Examiner.

f. For the MBBS First Prof (Batch 2015) held on 04.08.2016 to 06.08.2016, it was the turn of the applicant to be appointed as Internal Examiner but since she was being ignored in an arbitrary and illegal manner, she was compelled to get a legal notice issued, and only in pursuance of the same, the applicant was appointed as Internal Examiner for the MBBS First Prof (Batch 2015) vide letter dated 02.08.2016 issued by Punjab University, Chandigarh for the conduct of examinations on 4th to 6th August, 2016.

g. The applicant was appointed as External Examiner for practical examinations of MBBS 1stProf. Session: Nov/Dec. 2015 vide letter dated 03.05.2016 issued by Baba Farid University of Health Services, Faridkot (Annexure-A4). The applicant was also appointed as External Examiner for practical examinations of MBBS 1stProf. Session: July 2016 vide letter dated 16.07.2016 issued by M.M. Institute of Medical Sciences & Research, Maharishi Markandeshwar University, Haryana (Annexure-A5). The applicant was appointed as External Examiner for practical examinations of MBBS 1stProf. Session: May/June 2016 vide letter dated 19.07.2016 issued by Baba Farid University of Health Services, Faridkot (Annexure-A6). The applicant was appointed as External Examiner for practical examinations of MBBS 1stProf. Session: May/June 2016 vide letter dated 12.08.2016 issued by Baba Farid University of Health Services, Faridkot (Annexure-A7). The applicant was appointed as External Examiner for practical examinations of MBBS 1stProf. Session: October 2016 vide letter dated 17.10.2016 issued by M.M. Institute Medical Sciences & Research, Ambala (Annexure-A8). The applicant was appointed as External Examiner for practical examinations of MBBS 1stProf. Session: May/June 2017 vide letter dated 02.08.2017 issued by Baba Farid University of Health Services, Faridkot (Annexure-A9). The applicant was appointed as External Examiner for practical examinations of MBBS 1stProf. Session: May/June 2017 vide letter dated 11.08.2017 issued by Baba Farid University of Health Services, Faridkot (Annexure-

A10). The applicant was appointed as External Examiner for practical examinations of MBBS 1stProf. for 04.09.2018 to 06.09.2018 issued by Department of Biochemistry, IGMC, Shimla (Annexure-A11). The applicant was appointed as External Examiner for practical examinations of MBBS 1stProf. Session: Nov/Dec 2019 vide letter dated 19.12.2019 issued by Baba Farid University of Health Services, Faridkot (Annexure-A12).

h. For the next MBBS First Prof (Batch 2016), Dr. Shivani Jaswal, who is junior to the applicant, was appointed as Internal Examiner. Again, for the next MBBS First Prof (Batch 2017) Dr. Shivani Jaswal was appointed as Internal Examiner. In the year 2018, it was the turn of the applicant to become as Internal Examiner. The applicant had approached the Academic Branch almost a month before i.e., in the month of June/July, 2018 and requested Dr. Arjun Dass to ensure that she must be appointed as Internal Examiner because it was her turn to become Internal Examiner in terms of MCI Regulations, 2012. However, despite assurances, the applicant came to know on 08.08.2018 in the morning session, that practical and grand viva-voce was being conducted by Dr. Jasbinder Kaur (HOD) along with Dr. Shivani Jaswal instead of the applicant. The applicant got issued legal notice dated 09.08.2018 for appointment as Internal Examiner for the examination scheduled in August, 2018. But the applicant was deprived of her right to be appointed

as Internal Examiner and Dr. Shivani Jaswal was again appointed as Internal Examiner for the MBBS First Prof (Batch 2017) year 2018.

- i. At the time of MBBS First Prof (Batch 2018) year 2019, it was the turn of the applicant to be appointed as Internal Examiner. But the applicant was not issued any letter for appointment as Internal Examiner although such letters are issued to Professors of other departments like Department of Anatomy and Department of Physiology from the Controller of Examinations, Punjab University.
- j. The applicant has alleged bias with malafide intention from respondent No.4 Dr. Jasbinder Kaur who is discriminating against the applicant on the ground of her being non medico teacher. She has also alleged that this discrimination is arising out of the fact that she had found some financial irregularities at the cost of public money taking place in the department. Such irregularities were in purchase of kits required for laboratory Tests etc. She has also alleged that the charge of Acting HOD in the absence of private respondent was not being given to her although she was the second senior most teacher after the private respondent No.4. Private respondent issued an office order dated 16.01.2018 holding that in the absence of HOD, only the next immediate senior most medical faculty would be given the charge of Acting HOD. Subsequently, the charge of Acting HOD was given to Dr. Seema Gupta, who is only an Assistant Professor and two stages down to the applicant. It was only after her

representation, that the Director Principal, Government Medical College Hospital, Chandigarh issued a letter dated 02.09.2019 intimating that 'henceforth Dr. Sushumna Sood, Associate Professor and re-designated as Professor under CAS may be given the Officiating Charge of the Headship in the absence of HOD/Biochemistry, as being stand second position in the Department of Biochemistry'. Despite this decision of the Director Principal, the Officiating Charge of the Headship was again given to Dr. Seema Gupta by the private respondent No.4.

k. The action of respondents in not appointing the applicant as Internal Examiner on rotation basis and as per her turn for the MBBS (First Prof Batch) and thereafter examinations which are held on yearly basis and appointing the juniors to applicant is not only arbitrary and illegal but also in violation of the provisions of 'Medical Council of India Regulations on Graduate Medical Education 2012' and Article 14 and 16 of the Constitution of India.

3. The respondents, in their reply statement, through their Advocate Shri Shobit Phutela, have averred as follows:

a) The applicant/petitioner has done M.Sc. Biochemistry (Hons) from Punjab University which is not in the list of recognized Medical Colleges available on the website of Medical Council of India (MCI), New Delhi.

b) As per clause 4 & 5 of the Medical Council of India, minimum qualifications for Teachers in Medical Institutions Regulations, 1998:

Clause 4- 'the appointing authority may consider the holders of equivalent post graduate qualification, which may be approved by Medical Council of India from time to time, to have the requisite recognized qualification in the subject concerned'.

Clause-5- 'the Medical Council of India shall determine equivalent qualification referred to in these regulations'.

c) As such, the certificate possessed by the applicant issued by Punjab University is of no avail in so far as her request for appointment as Internal Examiner is concerned.

d) Although the applicant is Associate Professor through UPSC in GMCH-32, Chandigarh and Professor through CAS, however, she has not been considered for the teaching post by MCI Inspectors in MCI inspection on 21st and 22nd May, 2019 and on 12th and 13th December, 2019. As per the assessments made by Medical Council of India, in their MBBS admission report 2019, they have observed that 'since her MSc and PhD is in non-medical biochemistry, she is not considered as Associate Professor'. The applicant has not been recognized as teacher by MCI during last two inspections and as per the MCI regulations. Hence, she could not be considered as examiner for MBBS First Prof.

e) The averment of the applicant that MSc Hons. From Punjab University, which is not a Medical Institute, is equivalent to M.Sc. Medical Biochemistry is denied on the ground that the certificate which the applicant possesses is neither from MCI nor UGC. The appointment of External/Internal Examiner for MBBS has to be made as per the Regulations on Graduate Medical Education (Amendment), 2019 issued by Board of Governors in super-session of Medical Council of India dated 04.11.2019. the relevant clause i.e. 1.2.9 (Appointment of Examiner) of the above said regulation is reproduced herein below:

“Clause 11.2.9(a) Person appointed as an examiner in the particular subject must have at least four years of total teaching experience as assistant professor after obtaining postgraduate degree in the subject in a college affiliated to recognized/approved/permited medical college.

Clause 11.2.9(b) For the Practical/Clinical examination, there shall be at least four examiners for 100 learners out of whom not less than 50% must be external examiners. Of the four examiners, the senior-most internal examiner will act as the Chairman and coordinator of the whole examination programme so that uniformity in the matter of assessment of candidates is maintained. Where candidates appearing are more than 100, two additional examiners one external & one internal) for every additional 50 or part there of candidates appearing be appointed.

Clause 11.2.9 (c) of the said Regulations: *“In case of non-availability of medical teachers, approved teachers without a medical degree (engaged in the teaching of MBBS students as whole-time teachers in a recognized medical college), may be appointed examiners in their concerned subjects provided they possess requisite doctorate qualifications and four years teaching experience (as assistant professors) of MBBS students. Provided further that the 50% of the examiners (Internal & External) are from the medical qualification stream”.*

Clause 11.2.9 (d) to (i) xxxxxx

Copy of the said Regulations on Graduate Medical Education (Amendment), 2019 is at Annexure-R4.

4. In her rejoinder, the applicant has stated as follows:

a) She is M.Sc. (Honours) in Biochemistry from Punjab University which is recognized by the UGC as well as MCI and the Degrees awarded by the Punjab University cannot be said to be a Degree which needs recognition from the MCI. The name of the applicant already appears in the website of the MCI in the Medical Education as entered at Sl.No.46570. MCI has clarified in Board of Governors decision dated 13.02.2020 that in Pre and Para Clinical Courses all eligible and recognized teachers (whether medical/Non-Medical) should be offered equal opportunities for teaching and Examinership in accordance with Regulation 13(3) of Appointment of Examiner of Graduate Medical Education Regulation, 1997. Many non-medical faculty members who have similar qualifications as that of applicant i.e. teachers not possessing MBBS Degree, from the Department of Bio- Chemistry have been duly approved by MCI. The names of some of them are as under:

- i. Dr. Saroj Jaswal, Professor, Biochemistry, Government Medical College, Mandi.
- ii. Dr. K.K. Sharma, Professor & Head of Biochemistry, Government Medical College, Nahan.
- iii. Dr. Varinder Jaswal, Professor & Head of Biochemistry, Government Medical College, Mandi.
- iv. Dr. Ranjan, Professor & Head of Biochemistry, Government Medical College, Chamba.

- v. Dr. Kuldeep Singh, Professor of Biochemistry, Government Medical College, Patiala.
- vi. Dr. Sanjeev Kumar, Professor & Head of Biochemistry, G.R. Medical College, Gwalior.
- vii. Dr. Nivedita Singh, Professor of Biochemistry, G.R. Medical College, Gwalior.
- viii. Dr. Purnima Dey Sarkar, Professor & Head of Biochemistry, Mahatma Gandhi, Medical College, Indore.
- ix. Dr. Raj Kumar Vyas, Professor of Biochemistry, Bikaner Medical College.
- x. Dr. Mini Verma, Professor of Biochemistry, Gian Sagar Medical College and Hospital.
- xi. Dr. Shashank Tyagi, Professor & Head of Biochemistry, Shivpuri, MP.

b) That it is evident from Regulation 13(3) of the MCI Regulations, it makes no distinction qua the qualification M.Sc. Biochemistry (Non-Medical & Medical) and the same having been certified vide annexure-A1 by the Punjab University as well. The Government Medical College and Hospital, is also affiliated to Punjab University, Chandigarh and Degree/Diploma are awarded by the Punjab University, Chandigarh. It is strange to say that all Degrees/Diplomas obtained from the Government Medical College awarded by the Punjab University are not from Medical Institute. It is nowhere stated that the faculty already existing as non-medical faculty would not be appointed as Internal Examiner when the similarly placed faculty members are being appointed.

c) The Government of India vide its letter dated 25.03.2008 had observed as follows:

“The issues raised in these representations were examined in the Ministry keeping in view the provisions contained in the MCI Teachers Eligibility Qualifications Regulations, 1971 and the MCI Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 and the stand taken by MCI. The Ministry is of the view that those medical teachers who were appointed as medical teachers on the basis of MCI Regulations of 1971 and have worked during the period when MCI Teachers Eligibility Qualifications Regulations, 1971 were in vogue, should not be disqualified as medical teachers and should not be denied promotion to the higher posts merely on the ground that they do not fulfil the criteria prescribed by the MCI in their recommendations of years 1974, 1977, 1982, 1983, 1989 and 1995. Further, on re-examination, it has been noticed that both the Ministry as well as MCI while framing the MCI Regulations of 1998 missed to incorporate a clause to safeguard the career prospects of these teachers who were appointed on the basis of qualifications and experience prescribed in the MCI Regulations of 1971.

In order to protect the interests of such medical teachers and also to overcome severe scarcity of medical teachers in the pre-clinical specialties in the country presently, it has now been decided to rectify the arrangement by amending the MCI regulations of 1998 suitably.

It has been further decided that pending corresponding amendment to 1998 regulations, the teachers appointed in the pre-clinical specialties viz. Anatomy, Bio-chemistry, Physiology etc., on the basis of qualifications and experience prescribed in the MCI Regulations of 1971 should be allowed to continue to function as medical teachers and shall be granted further promotions, even though these teachers do not fulfil the criteria prescribed in the MCI Regulations of 1998.”

- d) It is not understood that why the respondents did not send the name of the applicant to the Punjab University as per her turn, as it is for the Punjab University to decide for appointment as Internal Examiner.
- e) It has been alleged by the respondents that in MCI Inspections held on 29.01.2018 the MCI Inspectors had not considered Dr.Sushumna Sood working as Professor as a teaching faculty for MBBS. This fact is factually incorrect as would be evident from the MCI Inspection Report dated

29.01.2018. In the Inspection Report of 2019 only, the applicant has been shown to be not considered as Associate Professor which is contrary to the law declared by the Hon'ble Supreme Court and also the letter dated 25.03.2008 of the Government of India. The Punjab University has already considered the qualification of the applicant equivalent for academic purpose and therefore, the respondents No.1 to 3 is supposed to send the name of the applicant to Controller of Examination, PU, Chandigarh and it is for them to decide the appointment of the applicant as Internal Examiner whether she is eligible or not but the respondent No.3 cannot withhold the name of the applicant.

5. Heard learned counsels for the parties with regard to their pleadings and the arguments in the matter.
6. The primary relief being sought by the applicant is regarding her appointment as Internal Examiner on rotation basis in terms of the provisions of Medical Council of India Regulations on Graduate Medical Education 2012. She has also prayed for her appointment as Internal Examiner for the examination scheduled to be held in August/September, 2020. At present the relief prayed for, has been rendered infructuous, since the examinations scheduled to be held in August/September, 2020 are already over. However, this relief will be examined on merits, on the issue of her right to be considered for appointment as Internal Examiner on rotation basis for future examinations conducted by the Punjab University.

7. The appointment as examiner for the MBBS First Professional Examinations is in terms of the provisions of Medical Council of India Regulations on Graduate Medical Education 1997 as amended from time to time. As per the latest Regulations on Graduate Medical Education Amendment 2019 published on 04.11.2019, the following provisions exist regarding appointment of examiners:

11.2.9 Appointment of Examiners

- (a) *Person appointed as an examiner in the particular subject must have at least four years of total teaching experience as assistant professor after obtaining postgraduate degree in the subject in a college affiliated to a recognized/approved/permited medical college.*
- (b) *For the Practical/ Clinical examinations, there shall be at least four examiners for 100 learners, out of whom not less than 50% must be external examiners. Of the four examiners, the senior-most internal examiner will act as the Chairman and coordinator of the whole examination programme so that uniformity in the matter of assessment of candidates is maintained. Where candidates appearing are more than 100, two additional examiners (one external & one internal) for every additional 50 or part thereof of candidates appearing, be appointed.*
- (c) *In case of non-availability of medical teachers, approved teachers without a medical degree (engaged in the teaching of MBBS students as whole-time teachers in a recognized medical college), may be appointed examiners in their concerned subjects provided they possess requisite doctorate qualifications and four years teaching experience (as assistant professors) of MBBS students. Provided further that the 50% of the examiners (Internal & External) are from the medical qualification stream.*
- (d) *External examiners may not be from the same University.*
- (e) *The internal examiner in a subject shall not accept external examinership for a college from which external examiner is appointed in his/her subject.*
- (f) *A University having more than one college shall have separate sets of examiners for each college, with internal examiners from the concerned college.*
- (g) *External examiners shall rotate at an interval of 2 years.*
- (h) *There shall be a Chairman of the Board of paper-setters who shall be*

an internal examiner and shall moderate the questions.

(i) All eligible examiners with requisite qualifications and experience can be appointed internal examiners by rotation in their subjects.

(j) All theory paper assessment should be done as central assessment program (CAP) of concerned university.

(k) Internal examiners should be appointed from same institution for unitary examination in same institution. For pooled examinations at one centre approved internal examiners from same university may be appointed.

(l) The grace marks up to a maximum of five marks may be awarded at the discretion of the University to a learner for clearing the examination as a whole but not for clearing a subject resulting in exemption.

8. A careful study of these regulations indicates that subjects being taught in the MBBS course are classified in terms of pre-clinical subjects, para-clinical subjects and clinical subjects. The course relating to Biochemistry is classified as a pre-clinical subject.

9. As per Schedule I of Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998, (Amended upto 8th June, 2017), of Medical Council of India, the following provisions are prescribed regarding eligibility of persons to be appointed on a teaching post in a medical college:

Every appointing authority before making an appointment to a teaching post in medical college or institution shall observe the following norms:

1. All Medical teachers must possess a basic University or equivalent qualification included in any one of the Schedules to the Indian Medical Council Act, 1956 (102 of 1956). They must also be registered in a State Medical Register or Indian Medical Register.

2. In the departments of Anatomy, Physiology, Biochemistry, Pharmacology and Microbiology, non-medical teachers may be appointed to the extent of 30% of the total number of the posts in the department. A non-medical approved medical M.Sc. qualification shall be a sufficient qualification for appointment as Lecturer in the

subject concerned but for promotion to higher teaching post a candidate must possess the Ph.D. degree in the subject. The Heads of these departments must possess recognized basic university medical degree qualification or equivalent qualification. However, in the department of Biochemistry, non-medical teachers may be appointed to the extent of 50% of the total number of posts in the department. In case of the paucity of teachers in non-clinical departments relaxation upto the Head of the Department may be given by the appointing authority to the nonmedical persons if suitable medical teacher in the particular non-clinical speciality is not available for the said appointment. However, such relaxation will be made only with the prior approval of the Medical Council of India. A non-medical person cannot be appointed as Director or Principal or Dean or Medical Superintendent. In the departments of Community Medicine and Pharmacology, Lecturers in Statistics and Pharmacological Chemistry shall possess M.Sc. qualification in that particular subject from a recognized University.

10. It is therefore apparent that as per the Medical Council of India Regulations, 1998, upto 50% teachers in Biochemistry can be appointed on the basis of their M.Sc./PhD qualifications. In this particular case, the applicant had been selected as teacher since she obtained qualification of M.Sc. Biochemistry from Punjab University, followed by a Ph.D in Biochemistry from the Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh. PGIMER is a medical institute involved in medical education and research besides treating patients. Hence, the applicant, apparently had the necessary qualifications to be appointed as an Assistant Professor in the Department of Biochemistry in the Govt. Medical College, Chandigarh. She was appointed as Assistant Professor in the Dept. of Biochemistry in the Govt. Medical College, Chandigarh, after selection through the UPSC, in 1998. She has been involved in teaching and research in Government Medical College, Chandigarh, from 1998 till date. She was subsequently selected as an Associate Professor in the

same Department, through UPSC, in 2010. She has been appointed as Professor under the Career Advancement Scheme from 2012 onwards. Since she has already been involved in teaching for so many years in the Govt. Medical College, Chandigarh, hence, the contention of the respondents that she cannot now be considered as a teacher defies logic. If she was considered to be not qualified to teach the subject of Biochemistry in the medical college, then she should not have been appointed as a teacher of the subject in 1998. After utilising her services as teacher for so many years, there is no basis for the respondents to now claim that she is not qualified to teach the students. The regulations of MCI itself allow upto 50 percent of teachers in the Biochemistry subject to be from non-medical background.

11. The advisory issued by the Medical Council of India, Board of Governors in supersession of Medical Council of India dated 13.02.2020, also very clearly mentions as follows:

'some universities/medical institutions are not offering examinership to recognized medical teachers with M.Sc./Ph.D qualification in pre-clinical subjects even though the BoG-MCI Regulations make no such distinction. It is hereby brought to the notice of all concerned that in pre & para clinical courses all eligible and recognized teachers (whether medical/non-medical) should be offered equal opportunities for teaching and examinership in accordance with Regulations 13(3) – Appointment of examiner of Graduate Medical Education Regulations, 1997.'

12. The Regulations on Graduate Medical Education Amendment 2019 published on 04.11.2019 state that "*persons appointed as an examiner in the particular subject must have at least four years of total teaching experience as Assistant Professor after obtaining post graduate degree in the subject in a college*

affiliated to a recognized/approved/permited medical college". In this case, the applicant has Post Graduate Degree (Ph.D.) from PGIMER which is a medical college. She has more than 4 years of total teaching experience in the Govt. Medical College, Chandigarh. Hence, there is no doubt that she is eligible to be appointed as examiner whether internal or external under these regulations.

13. It is borne out from the pleadings made by the applicant which have not been refuted by the respondents, that she has already served as External Examiner on many occasions for other Universities. There can, therefore, be no reason as to why she cannot be considered to be appointed as Internal Examiner on her turn in the Government Medical College affiliated to Punjab University. As per the regulations, there is no distinction, in terms of eligibility for appointment, as internal or external examiner. In any case, the decision to appoint her as Internal Examiner rests with the Punjab University and not with the Govt. Medical College, Chandigarh.

14. The decision of the respondents, not to forward her name for consideration of the Punjab University, for appointment as internal examiner, is therefore, without any merit. The respondents are, accordingly directed, to consider and forward her name for appointment as Internal Examiner in the examinations being conducted by the Punjab University for all future examinations, on her turn, as per the existing guidelines on rotation of examiners. She shall be offered equal opportunities for teaching and examinership in all future

examinations, in compliance to the advisory issued by the Medical Council of India dated 13.02.2020.

15. The OA is accordingly, allowed with the above observations and directions.

However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (ADMN)

(R. N. SINGH)
MEMBER (JUDL)

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