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Central Administrative Tribunal
Principal Bench, New Delhi.

OA-2688/2003

MA-2346/2003

MA-2348/2003

New Delhi this the 1st day of June, 2005.

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. M.K. Misra, Member(A)

1. Dr. Om Parkash Khurana,
son of Shri Lekh Raj,
resident of B-5/39, Tibbia College Campus,
Karol Bagh, New Delhi.
2. Dr. U.S. Sharma,
son of late Shri Devendra Nath Shastri,
resident of B-241, Gali No.1,
Prem Nagar, Nathu Pura,
Delhi-84.
3. Dr. Vivek Bhushan,
son of Shri Raj Pal Shastri,
resident of 7/208, Ramesh Nagar,
New Delhi-15.
4. Dr. Yusuf Jamal,
son of late Mr. Mustafa Kamal
resident of C-9/289, Yamuna Vihar,
Delhi-53.
5. Dr. (Miss) Afsar Jahan
daughter of Mr. Abdul Haikhan
resident of B-1/2, Tibbia College Campus,
Karol Bagh, New Delhi.
6. Dr. M. Idris Khan,
son of Mr. N.A. Khan
resident of B-5/38, Tibbia College Campus,
Karol Bagh, New Delhi-5.
7. Dr. Abdul Hafeej,
son of Mr. Sabit Ali,
resident of Z-46A, DDA Colony,
New Ranjit Nagar,
New Delhi-8.
8. Dr. Surinder Kaur,
daughter of Shri Didar Singh Kundra,
resident of IX/2453, Lane No.14,
Kailash Nagar,
Delhi-31.
9. Dr. K.K. Sijoria,
son of Sh. N.K. Sijoria,
resident of Principal Kothi Annex,
Tibbia College Campus,
Karol Bagh, New Delhi-5.

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10. Dr. K.U. Qadri,
son of Mr. Syed Hasan Qadri,
resident of D-23, 24, Sitapuri,
Pankha Road,
New Delhi-45.

11. Dr. Ahmad Yasin,
son of Mr. Anees Ahmad,
resident of A-3/9, Tibbia College Campus,
Karol Bagh,
New Delhi-5.

12. Dr. S.M.A. Rizvi,
son of Mr. Shabih Haider,
resident of 147-A, Gali No.10,
Zakir Nagar, Okhla,
New Delhi-25.

13. Dr. F.R. Misbahi,
son of Mr. Haji Abdul Sami,
resident of Principal Kothi Annexe,
Tibbia College Campus,
Karol Bagh,
New Delhi-5.

14. Dr.(Miss) Nuzhat Ishtiaq,
wife of Dr. S.I. Ahmed,
resident of Staff Qr. No.30,
Tibbia College Campus,
Karol Bagh, New Delhi-5. Applicants

(through Sh. R.P. Gupta, Advocate)

Versus

1. Govt. of National Capital Territory of Delhi
through Chief Secretary,
Delhi Secretariat, Players Building,
I.P. Estate,
New Delhi-2.

2. Lt. Governor of Delhi,
Raj Niwas, Raj Niwas Marg,
Delhi.

3. Principal Secretary (Health & Family Welfare)
Govt. of NCT of Delhi, Delhi Secretariat,
Players Building, I.P. Estate,
New Delhi-2.

4. A&U Tibbia College
through Executive Officer,
Ajmal Khan Road, Karol Bagh,
New Delhi-5. Respondents

(through Mrs. Renu George, Advocate)

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O R D E R

Hon'ble Mr. M.K. Misra, Member(A)

14 applicants by this OA seek the following relief:-

- "(A) That the respondents be directed to declare that the petitioners have been appointed in the Government.
- (B) The respondents be directed to release all the arrears of the petitioners based on the revision of pay scales of petitioners in line of Vth Central Pay Commission recommendations from 01.01.1996 onwards alongwith interest at the rate of 10 percent per annum.
- (C) The respondents be directed to count the past service of the petitioners in A&U Tibbia College as service in the Government for pensionary benefits.
- (D) The respondents be directed that no approval of the UPSC is required in the case of petitioners who were appointed under the regulations framed under law.
- (E) To treat the promotion of the petitioners made under Merit Promotion Scheme notified in 1996 in Situ and Personal to the individual teachers promoted and without linkage to the vacancies or to create posts retrospectively from 01.12.1996 i.e. the date on which they were promoted necessary to accommodate the petitioners.
- (F) To direct that the petitioners are entitled to pension as per UGC norms i.e. the college under UGC are entitled to pensionary benefits as per CCS Pension Rules and that the same rules shall apply to the petitioners.
- (G) All the teachers may be allowed to be paid monthly pay and allowances in the existing scales pending their formal appointment in the Government.
- (H) From the date of the take-over of the college, the staff of A&U Tibbia College may be given pay & allowances and all other benefits as per Rules & Regulations applicable to Government employees."

2. Briefly stated the facts of the case are that the Ayurvedic & Unani Tibbia College, Delhi founded by late Hakim Ajmal Khan was earlier governed by the Tibbia College Act, 1952 for the purpose of management by the Tibbia College Board. Later on, the above college was taken over

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by the Government of National Capital Territory of Delhi. By virtue of the Act, namely, Delhi Tibbia College, (Take over) Act, 1997 w.e.f. 1.5.1998. All the assets and liabilities of the college including its allied units were transferred to Delhi Government under Section 4 of the above said Act. Before the commencement of the above Act w.e.f. 1.5.1998 the Tibbia College Board framed rules for appointments of the faculty members and other employees and also prescribed the service conditions for them. These rules were published in the official Gazette dated 19.9.1961 and the same was amended from time to time. These rules were approved by the Chief Commissioner of Delhi and subsequently by Lt. Governor of Delhi as per provision in Clause-C of Section 16 of the Tibbia College Act. In the Appendix-I of Tibbia College Regulations the category of posts and their appointing authorities are mentioned and in Appendix-II of the Regulation prescribes qualification for eligibility of selection.

3. Merit Promotion Scheme 1987 was introduced for the purpose of promotion of the college teachers and according to which certain eligibility conditions were prescribed. One of the conditions was that every Lecturer in the senior scale of the college would be eligible for promotion to the post of Reader in the college in the pay scale of Rs. 3700-5700, if one has complete 8 years of service and also completed 4 years of service as a Lecturer. Other conditions were also prescribed from academic angle. Certain procedure was prescribed for evaluation and performance of the employee for the purpose of merit promotion in the grade of Reader.

4. The Lt. Governor of Delhi also sanctioned the UGC scale w.e.f. 1.1.1986. The petitioners in the Merit Promotion Scheme, 1987 were promoted as Readers w.e.f. 1.12.1996 as per the recommendation of the DPC held on 21.3.1997 in the pay scale of Rs. 3700-5700. It was also stated by the learned counsel for the

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applicants that the promotion under the above Scheme was time bound in nature and was beyond linkage to the vacancies. The Delhi Government Cabinet also approved the time bound Career Progression Scheme on the pattern of Central Health Services Rules vide order dated 29.10.2001. General Provident Fund-cum-Pension-cum-Gratuity Scheme was also applicable to the employees of the Tibbia College as per Notification dated 29.11.1997 w.e.f. 26.2.1997.

5. It was alleged by the applicants that under the Merit Promotion Scheme service was to mean teaching experience of non-graduate or post-graduate classes. The service for the purpose of the said Scheme also includes teaching experience as Lecturer in permanent and temporary capacity and also Demonstrator in permanent and temporary capacity or as tutor or equivalent. The time or period spent on leave except extra ordinary leave that too for non-academic purpose was to be treated and included in teaching experience. The appointment to the post of Lecturer could also be made directly and if a person is appointed as Demonstrator could also be promoted as a Lecturer. The Vth Central Pay Commission report was also made applicable to the employees of Tibbia College w.e.f. 1.1.1996 but the scale of the teachers was not revised w.e.f. 1.1.1996. Later on, the Delhi Government decided to give the teachers of Tibbia college the Government pay scale w.e.f. 1.1.1996 vide Notification dated 17.7.2000. The revised pay scale for the Readers at present is Rs.12000-18000.

6. The dispute arose only when 26 Lecturers were promoted as Senior Lecturers/Readers w.e.f. 1.12.1996 without the availability of Senior Lecturers/Readers. These promotions were made with the *Mr.*

approval of Government of Delhi Board taking over the college by Government of Delhi. However, when the bills for the arrears of the pay and allowances on account of revision of pay scales of teachers from 1.1.1996 to August 2000 was presented to Pay & Accounts Office, the same office returned bills with the objections that the posts of Senior Lecturers/Readers have not been sanctioned in the department against which the arrears could be paid. Some of the Lecturers promoted as Readers who were getting the pay scale of Reader have now retired and in their cases the final decision is still pending. However, some of the applicants are still employed there. They are getting salary of a Reader not on permanent basis but for 3 months at a time. The Screening Committee was constituted which opined that the approval of UPSC should be obtained in the case of promotion of a Lecturer to the post of Reader and above as they are holding Group-A post and since in the case of the applicants no approval from the UPSC was taken by the competent authority, therefore, the salary was not paid on permanent basis. However, as per the seniority list of the teaching staff, the applicants name appeared therein. It was also stated that a Cabinet note was prepared for the purpose of approval of the Government in respect of the employees of the Tibbia College for making them equivalent to the employees of the CGHS which is still under consideration. In this respect many representations were sent by the applicants to the competent authority for consideration and removal of their grievances in respect of payment of arrears as well as promotion on the basis of earlier rules and not to apply new rules i.e. eligibility qualification being post graduate and approval of UPSC is required (earlier the eligibility qualification was graduate and approval of the UPSC was not required) since no response was received by them from the competent authority, hence this OA through which they prayed for issuance of direction to the competent respondent.

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7. The learned counsel for the applicants averred that a note for council of Ministers was prepared and sent to them for approval vide Annexure A/1 at pages 28-32. The same is still pending under their consideration. In appendix-I, (Annexure A/2 at pages 35-36), the composition of DPC and the appointment authority has been made. It was further submitted that vide office order dated 1.8.2000 (Annexure A/8 at page 55), the applicant No.1 was given the pay scale of Lecturer in the revised pay scale of Rs.8000-13500/- plus other allowances and on promotion as Reader, the pay scale of Rs.12000-18000 was given to him w.e.f. 1.12.1996 (page 56). The DPC made a recommendation (Annexure A/5 page 45 - 46) for the post of Lecturer on 21.3.1997 in respect of applicants (except Applicant No.8 - Dr. Surinder Kaur and Applicant No.11 - Dr.Ahmad Yasin) for approval and appointment to the competent authority. The same were approved vide order dated 26.3.1997 (page 51). The main argument of the learned counsel for the applicants is that the promotions of the applicants were made on the basis of the extant rules prevailing at that time when the promotions took place. The new rules came into existence by a notification dated 20.5.1996 (Annexure A/5 at page 40) in respect of Merit Promotion Scheme. It was mentioned there under the heading note that the requirement of possessing of postgraduate degree qualification in the concerned higher appointment/ promotion shall not be applicable in the case of existing teachers holding regular teaching post whose appointment was initially made prior to first July 1989, i.e., from the date CCIM revised the qualifications of the teachers. It was further argued that at the time of promotion to the post of Reader, the requirement of Mr.

consultation with the UPSC was not required. Further the final seniority list vide notification dated 22.1.2003 in respect of Lecturer in the pay scale of Rs.8000-13500/- was issued in respect of applicants (Annexure A/20 pages 73-76). After the taking over of the Tibbia College Board by the Govt. of National Capital Territory of Delhi, the new Rules were framed and notified in the Delhi Gazette on 11.10.2002 wherein higher qualification and the consultation with the UPSC become necessary for the purpose of promotion to the cadre of Reader. The averment is that all the applicants were promoted before the date of this notification dated 11.10.2002, therefore, they are not applicable in the case of the applicants and the objection raised by the competent authority are not legal and valid. Therefore, all the arrears should be paid to them as per extant rules. The Director of Health Services, Delhi Govt. also sent the issue of audit objection raised in the case of the applicants for the purpose of settlement to the Finance Department through proper channel (page 143). The Government of Delhi also recognized the status of the applicants by way of facilitating them with the Scheme of Pension, Provident Fund etc. (Pages 160-169).

8. In the counter reply, learned counsel for the applicants submitted that the applicants seek multiple reliefs in their OA, therefore, their OA is not maintainable. In the additional affidavit, it has been stated that teachers of Tibbia College were covered under Section 16 (C) of the Tibbia College Act, 1952. At the time of take over of the College, the Screening Committee was constituted to examine the candidature of the employees (teaching and non-
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teaching) to declare them as Government servants. Out of 213 employees, only 93 employees were declared as Government servants on the recommendations of the Screening Committee and with the prior approval of the Hon'ble Lieutenant Governor of Delhi vide notification dated 23.8.2001. The Hon'ble Lieutenant Governor did not approve the approval for declaring the teachers of Tibbia College as Government servants because they hold Class I post and cannot be declared as Government servants without the concurrence of UPSC. The UPSC has already finalized the Rules for the posts of Lecturer of the Tibbia College vide Notifications No.169 and 195 dated 11.10.2002 and 11.12.2002 respectively. Therefore, the case of the teachers for higher promotion was sent to the UPSC in August, 2002 and also made consultation with the UPSC from time to time. Since the posts of Reader in respect of applicants are to be approved in consultation with the UPSC as per the extant rules higher qualification is also required in the case of the applicants, the same since having been not approved by the UPSC on account of their lower qualification, their case was not maintainable for the post of Readership as it being of Group 'A' post and the post of Lecturer is also Group 'A' post and for the purpose of promotion from Group 'A' to Group 'A' post, approval of UPSC is mandatory.

9. We have heard the learned counsel for the parties and also perused the material available on record.

10. The applicants also filed MA 2346/2003 for condonation of delay. For the reasons given in the MA, the delay is condoned on
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the ground that the arrears of pay and other allowances having not been paid by the respondents is a perpetual cause of action.

11. We observe that the applicants have sent representations to the Chief Minister as well as to other competent authority working under the Chief Minister of National Capital Territory of Delhi. These representations are still pending for decision. After taking over the Tibbia College Board by the Delhi Government, a notification is required to be issued on behalf of the Lieutenant Governor of Delhi for the purpose of declaring the employees as well as the teaching faculty members as a Government servant, which has not been done so far. Unless it is done, the erstwhile employees of the Tibbia College Board cannot *suo moto* or automatically become the employees of the Delhi Government. However, we observe that erstwhile 93 employees of the Tibbia College Board have been declared as Government servants by the notification dated 23.8.2001 issued on behalf of Lieutenant Governor of Delhi.

12. As regards the pensionary benefits, we observe that none of the applicants has so far retired from the service or superannuated, they are still under the employment of Tibbia College Board. Therefore, the question of pensionary benefits at this stage is a premature claim of the applicants. Therefore, relief cannot be adjudicated at this juncture. Hence, it is not allowed. However, the applicants are given liberty to approach the appropriate forum when cause of action arises in future.

13. As regards the higher qualification required for the purpose of promotion from Lecturer to Reader and the approval of the UPSC for *Mr.*

such promotion in the case of the applicants, we observe that such Rules were framed much after the applicants became the Reader under the promotional schemes. We further observe that the matter relating to promotion, pension and other service condition of teachers of Tibbia College were discussed in a meeting held on 24.2.2004 under the Chairmanship of Hon'ble Minister of Health of Delhi Government, which were put up before the Cabinet for its approval. The approval is still pending for consideration by the Cabinet. We also observe that the Delhi Administration by Circular dated 30.3.1998 approved the UGC pay scale for the Lecturers of the then Tibbia College Board by Resolution No.13 dated 3.3.1986/6.3.1986. It is also observed that Merit Promotion Scheme is still pending for approval by the UPSC. The post of Demonstrator has been abolished and the post of Lecturer has been made as a direct recruitment post with higher education of post graduate and with the approval of the UPSC for selection purpose, subsequent to taking over by the Tibbia College by the Government of Delhi vide notification dated 11.12.2002 and 11.10.2002. The respondents' agreed that senior Lecturer / Reader is promoted under the Merit Promotion Scheme without linkage to creation of post and, therefore, promotion to higher scale are in situ them only and, therefore, their names as Lecturers and Readers and pay scales appeared in the final seniority list. The matter of arrears of pay and pensionary benefits are under consideration of the Cabinet for its approval. Only three Readers were working on regular posts and other are working as a Reader under the Merit Promotion Scheme. It is also admitted by the respondents that the Delhi Government had already adopted

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the scale of pay as per Central Vth Pay Commission's recommendations and their arrears of pay have been withheld since the approval of UPSC has not been accorded as yet.

14. It is a settled law that whenever the educational institutions are taken over by the State Government through an agreement/notification or any other document, the terms and conditions prescribed therein would be applicable to the staff and the teaching faculty. In the present case, we do not observe that any such document/ agreement/ notification at the time of taking over of the Tibbia College, contains the conditions to the effect that the new rules after taking over would be applicable as framed by the Government of Delhi from time to time, through the notification (supra), to the employees of the Tibbia College. In the case of **State of Punjab and others Vs. Tara Singh Shahi**, (1996) 8 SCC 448, the Apex Court held that the private college taken over by the State Government pursuant to a gift deed executed between the management of the private college and the State Government, the condition of service would be subjected to the terms and conditions contained in such gift deed and would be binding on the staff and the teachers of the college. In the present case, such terms and conditions are not available or at least the respondents did not bring to the notice of the Tribunal with the counter reply or during the course of hearing of this case.

15. In the above case (**Tara Singh Shahi** (supra)), the gift deed, *inter alia*, provided that unless those staff members who possessed the requisite qualification would be absorbed and that the principal of *MNC*

College would be taken over only as a senior-most Lecturer of the College. **Shri Tara Singh Shahi**, respondent in the above cited case, was accordingly absorbed as senior-most Lecturer. Thus, rules made after the taking over of the private college were made applicable as per the terms and conditions given in the gift deed. In the present case, under our consideration, no such condition appears to have been made at the time of taking over of the Tibbia College of the Government of Delhi.

16. In the light of the above discussion, we direct the respondents as under:-

- (a) In the absence of any terms and conditions in the document prepared at the time of taking over of the Tibbia College by the Delhi Government, old rules prior to such taking over would be made applicable in the case of the applicant in respect of their promotions as Reader;
- (b) the representations already submitted by the applicants from time to time before the competent authority, i.e., before the Government of Delhi, would be considered by them in the light of (a) above within a period of four months from the date of receipt of the copy of this order; and
- (c) liberty is granted to the applicants to approach appropriate forum, if they still feel aggrieved after their representations are decided by the competent authority.

17. OA is disposed of accordingly with no order as to costs.


(M.K. MISRA)
MEMBER (A)


(V.S. AGGARWAL)
CHAIRMAN

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