

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY, 2024

PRESENT

THE HON'BLE MR. N. V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

WRIT APPEAL No.242/2024 (S-RES)

C/W

WRIT APPEAL No.366/2024 (S-RES)

WRIT APPEAL CROB. No.2/2024 (S-RES)

IN W.A. No. 242/2024

BETWEEN:

DR. ANIL KHURANA,
S/O LATE SHRI KASTURI LAL KHURANA,
AGED ABOUT 63 YEARS,
RESIDING AT No. WZ-69 F
MEENAKSHII GARDEN,
NEW DELHI-110018.

...APPELLANT

(BY SRI VIKRAM HUILGOL, SENIOR ADVOCATE A/W
MS. STEFY MARIA SEBASTIAN, ADVOCATE FOR
SMT. MANASI KUMAR, ADVOCATE)

AND:

1 . DR. AMARAGOUDA L PATIL
S/O LINGANAGOUDA A PATIL,
AGED ABOUT 65 YEARS,
RETIRED PROFESSOR AND DIRECTOR,
DEPARTMENT OF AYUSH,
GOVERNMENT OF KARNATAKA,
BANGALORE.
RESIDING AT No. 86,
AURORAA PRIDE APARTMENT,

9TH MAIN, J. C. NAGAR,
KURUBARAHALLI,
BENGALURU-560086.

- 2 . UNION OF INDIA,
MINISTRY OF AYUSH,
AYUSH BHAVAN, B BLOCK,
GPO COMPLEX, INA,
NEW DELHI-110023.
REPRESENTED BY ITS SECRETARY,
3. THE SEARCH COMMITTEE,
MINISTRY OF AYUSH,
AYUSH BHAVAN, B BLOCK, INA
NEW DELHI-110023,
REPRESENTED BY ITS
CONVENOR/ SECRETARY.

...RESPONDENTS

(BY SRI ASHOK HARANAHALLI, SENIOR ADVOCATE A/W
SRI B. VINAYAKA, ADVOCATE FOR C/R1;
SRI K. ARAVIND KAMATH, ASGI A/W
SRI H. SHANTHIBHUSHAN, DSGI A/W
SRI B. PRAMOD, CGC FOR R2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE
PRESENT WRIT APPEAL, SET ASIDE THE PORTION OF THE
IMPUGNED JUDGEMENT DATED 10/01/2024 RENDERED BY THE
LEARNED SINGLE JUDGE WHEREBY WP No.15859/2021 HAS BEEN
ALLOWED.

IN W.A. No. 366/2024

BETWEEN:

- 1 . UNION OF INDIA,
MINISTRY OF AYUSH,
AYUSH BHAVAN,
'B' BLOCK,
GPO COMPLEX, INA,
NEW DELHI-110 023,
REPRESENTED BY ITS SECRETARY.

- 2 . THE SEARCH COMMITTEE,
MINISTRY OF AYUSH,
AYUSH BHAVAN,
B BLOCK, INA,
NEW DELHI-110 023,
REPRESENTED BY ITS
CONVENOR/SECRETARY.

...APPELLANTS

(BY SRI K. ARAVIND KAMATH, ASGI A/W
SRI H. SHANTHI BHUSHAN, DSGI A/W
SRI B. PRAMOD, CGC)

AND:

- 1 . DR. AMARAGOUDA L. PATIL,
S/O. LINGANAGOUDA A. PATIL,
AGED ABOUT 65 YEARS,
RETIRED PROFESSOR AND DIRECTOR,
DEPARTMENT OF AYUSH,
GOVERNMENT OF KARNATAKA,
BANGALORE,
RESIDING AT No. 86,
AURORAA PRIDE APARTMENT,
9TH MAIN, J.C. NAGAR,
KURUBARAHALLI,
BENGALURU-560 086.
- 2 . DR. ANIL KHURANA,
S/O. LATE SHRI. KASTURI LAL KHURANA,
AGED ABOUT 63 YEARS,
RESIDING AT No. WZ-69F,
MEENAKSHI GARDEN,
NEW DELHI-110 018.

...RESPONDENTS

(BY SRI ASHOK HARANAHALLI, SENIOR ADVOCATE A/W
SRI B. VINAYAKA, ADVOCATE FOR C/R1;
SRI VIKRAM HUILGOL, SENIOR ADVOCATE A/W
MS. STEFY MARIA SEBASTIAN, ADVOCATE FOR
SMT. MANASI KUMAR, ADVOCATE FOR R2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
ORDER DATED 10/01/2024 PASSED BY THE LEARNED SINGLE
JUDGE IN WP No.15859/2021.

IN W.A. CROB. No.2/2024**BETWEEN:**

DR. AMARGOUDA L. PATIL,
 S/O. LINGANAGOUDA A. PATIL,
 AGED ABOUT 65 YEARS,
 RETIRED PROFESSOR AND DIRECTOR,
 DEPARTMENT OF AYUSH,
 GOVERNMENT OF KARNATAKA,
 BANGALORE,
 RESIDING AT No. 86,
 AURORAA PRIDE APARTMENT,
 9TH MAIN, J.C. NAGAR,
 KURUBARAHALLI,
 BENGALURU-560 086.

...CROSS OBJECTOR

(BY SRI ASHOK HARANAHALLI, SENIOR ADVOCATE A/W
 SRI B. VINAYAKA, ADVOCATE)

AND:

- 1 . UNION OF INDIA,
 MINISTRY OF AYUSH,
 AYUSH BHAVAN, B BLOCK,
 GPO COMPLEX, INA,
 NEW DELHI-110 023,
 REPRESENTED BY ITS SECRETARY.
- 2 . THE SEARCH COMMITTEE,
 MINISTRY OF AYUSH,
 AYUSH BHAVAN, B BLOCK,
 GPO COMPLES, INA,
 NEW DELHI-110 023,
 REPRESENTED BY ITS
 CONVENOR/SECRETARY.
- 3 . DR. ANIL KHURANA,
 S/O. LATE SHRI. KASTURI LAL KHURANA,
 AGED ABOUT 63 YEARS,
 RESIDING AT No. WZ-69F,
 MEENAKSHI GARDEN,
 NEW DELHI-110 018.

...RESPONDENTS

(BY SRI K. ARAVIND KAMATH, ASGI A/W
 SRI H. SHANTHI BHUSHAN, DSGI A/W
 SRI B. PRAMOD, CGC FOR R1 AND R2;

SRI VIKRAM HULIGOL, SENIOR ADVOCATE A/W
MS. STEFY MARIA SEBASTIAN FOR
SMT. MANASI KUMAR, ADVOCATE FOR R3)

THIS W.A.CROB. IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THIS CROSS OBJECTION AND SET ASIDE THE ORDER OF LEARNED SINGLE JUDGE IN SO FAR AS IT RELATES TO NON CONSIDERATION OF THE CONSEQUENTIAL 2ND PRAYER IN WP No-15859/2021 AND CONSEQUENTLY KINDLY ISSUE DIRECTION TO THE 2ND RESPONDENT SEARCH COMMITTEE TO RECOMMEND THE NAMES TO THE POST OF CHAIRPERSON OF NATIONAL COMMISSION FOR HOMOEOPATHY AMONG THE EXISTING ELIGIBLE APPLICANTS.

THESE WRIT APPEALS AND CROSS OBJECTION HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **K.V. ARAVIND J.**, DELIVERED THE FOLLOWING:

CORAM: HON'BLE THE CHIEF JUSTICE MR. JUSTICE
N. V. ANJARIA
and
HON'BLE MR. JUSTICE K. V. ARAVIND

C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE K. V. ARAVIND)

These two intra Court appeals and Cross-objection challenging the judgment in Writ Petition No.15859/2021 c/w Writ Petition No.15590/2021, dated 10.01.2024.

2. Writ Appeal No.242/2024 is by respondent No.3, Writ Appeal No.366/2024 is by respondent No.1 and Cross-objection by petitioner in the writ petition.

3. As both the writ appeals and cross-objection arises from same order, they are heard and considered together.

4. Heard Sri. K. Aravind Kamath, Additional Solicitor General of India along with Sri. H. Shanthi Bhushan, Deputy Solicitor General of India along with Sri. B. Pramod, Central Government Counsel for appellant in Writ Appeal No.366/2024 and respondent No.2 in Writ Appeal No.242/2024.

Sri. Vikram Huilgol, learned Senior counsel along with Ms.Stefy Maria Sebastian, learned counsel, on behalf of Smt.Manasi Kumar, learned counsel for appellant in Writ Appeal No.242/2024, respondent No.2 in Writ Appeal No.366/2024.

Sri. Ashok Haranahalli, learned Senior counsel along with Sri. B. Vinayaka, learned counsel for respondent No.1 in Writ Appeal No.242/2024 and Writ Appeal No.366/2024 and Cross Objector in W.A. Crob.2/2024.

5. Parties are referred as per their ranks in Writ Appeal No.242 of 2024 for convenience.

6. The issue raised for our consideration is eligibility conditions to the post of Chairperson, National Commission for Homoeopathy.

FACTS

7. Notification dated 16.01.2021 was issued by Union of India, Ministry of AYUSH inviting applications from eligible candidates to the post of Chairperson of National Commission for Homoeopathy. The appellant and respondent No.1 filed applications. The Appointment Committee of the Cabinet approved appellant's appointment as the Chairperson. Respondent No.2 issued Gazette notification appointing the appellant as Chairperson of National Commission for Homoeopathy. Respondent No.1 filed writ petition challenging the appellant's appointment. Learned Single Judge by order dated 10.01.2024 quashed the appellant's appointment as Chairperson and directed the Union of India to take necessary action to appoint Chairperson to National Commission for Homoeopathy afresh by taking note of the observations made by the learned Single Judge.

8. The original writ petitioner has preferred Cross-objection No.2/2024 in Writ Appeal No.366/2024 challenging the direction of learned Single Judge to Union of India to take necessary action to appoint Chairperson to the National Commission for Homoeopathy afresh instead to appoint existing applicants to the said post.

**SUBMISSIONS OF LEARNED SENIOR COUNSEL FOR THE
APPELLANT**

9. Sri. Vikram Huilgol, learned Senior counsel for the appellant submits that Search and Selection Committee was constituted as per Section 5 of the National Commission for Homoeopathy Act, 2020 (hereinafter referred to as 'Act of 2020' for short). The Search Committee recommended the name of the appellant. By considering the recommendation of the Search Committee, Appointment Committee of the Cabinet approved the appellant's appointment as the Chairperson. It is further submitted that the Expert Committee and the Appointment Committee of the Cabinet have considered the qualification prescribed under Section 4(2) of the Act of 2020. The appellant having qualified in terms of Section 4(2) of the Act of 2020, respondent No.2 appointed the appellant as the Chairperson. The finding of learned Single Judge that the appellant lacks qualification of 10 years as a leader in the area of Health Care Delivery, Growth and Development of Homoeopathy or education, is without any basis.

**SUBMISSIONS OF LEARNED ADDITIONAL SOLICITOR GENERAL
OF INDIA**

10. Sri K. Aravind Kamath, learned Additional Solicitor General of India appearing for the Union of India submits that Central

Council for Research in Homoeopathy (hereinafter referred to as 'CCRH' for short) for administration purposes divided its activities into different divisions. Each division functions independently regardless of the rank of the Officer heading the division. The training division was the major division in CCRH headed by the appellant. The person to qualify as a leader in terms of explanation to Section 4 of the Act, he need not to head the division even though the said division is named as department. It is further submitted that the applications, qualification and experience of the candidates have been examined by the Search Committee. The Search Committee having found the appellant fit and qualified to be appointed as a Chairperson of the National Commission for Homoeopathy, recommended for appointment. The appointment Committee of the Cabinet approved the appellant's appointment on the advise of the Search Committee. The Search Committee has considered the essential qualifications and eligibility criteria of the appellant in terms of Section 4(2) of the Act. It is submitted that it is not open to learned Single Judge to substitute opinion of the Search Committee. It is further submitted that as no *mala fides* or arbitrariness have been alleged against the Search Committee, the controversy regarding appointment of the

appellant is outside the purview of Article 226 of the Constitution of India.

**SUBMISSIONS OF LEARNED SENIOR COUNSEL FOR
RESPONDENT No.1 AND THE CROSS OBJECTOR**

11. Sri. Ashok Haranahalli, learned Senior counsel appearing for respondent No.1 and the Cross-objector submits that the appellant does not possess 10 years experience as a leader. Learned Senior counsel would further submit that learned Single Judge after setting aside the appointment of the appellant holding that he is not qualified, should have directed respondent No.2 to consider the remaining applicants to the post of Chairperson.

ANALYSIS

12. The appointment as Chairperson to National Commission for Homoeopathy is in terms of National Commission for Homoeopathy Act, 2020. Sub-section (2) of Section 4 prescribes the qualification to the post of Chairperson. The same reads as under:

- “4. (1) *The Commission shall consist of the following persons, namely:-*
- (a) *a Chairperson;*
 - (b) *Seven ex officio Members; and*
 - (c) *nineteen part-time Members.*

- (2) *The Chairperson shall be a person of outstanding ability, proven administrative capacity and integrity, possessing a postgraduate degree in Homoeopathy from a recognized University and having experience of not less than twenty years in the field of Homoeopathy, out of which at least ten years shall be as a leader in the area of healthcare delivery, growth and development of homoeopathy or its education.”*

13. Explanation to Section 4 explains the meaning of ‘leader’.

The same reads as under:

“Explanation:- For the purpose of this section 19, the term “leader” means the Head of a Department or the Head of an Organisation.”

14. The only controversy in all the appeals is to the scope and ambit of the term ‘leader’. The interpretation to the word ‘leader’ would determine the qualification to the post of Chairperson.

15. The appellant joined the service during September, 1987 as Research Assistant in CCRH. The appellant continued in different positions in CCRH. The notification inviting applications from eligible candidates was issued on 16.01.2021.

16. Sub-Section (2) of Section 4 prescribes two qualifications,
- (i) Twenty years experience in the field of Homoeopathy.
 - (ii) Out of Twenty years, 10 years as a leader.

Second part of the qualification of 10 years as a leader is in dispute. This Court prefers to consider 10 years experience as a leader prior to the date of notification i.e., 16.01.2021. The appellant worked as Assistant Director from May 2008 to June 2014, as a Deputy Director from June 2014 to January 2016, as Deputy Director General from January 2016 to 2019 and as Director General in-charge from July 2019 and continued as on the date of application.

17. It is the specific contention of the appellant and the Union of India that the different branches of CCRH are being headed by the concerned, in their independent capacity. Each branch of CCRH is Department by itself. The experience gained while heading the Branch would qualify as a leader.

18. It is the contention of the appellant that he was heading technical department in CCRH which supervises various research projects carried out by the Scientists under different research Institutes of the CCRH. The above fact is not in dispute.

19. It is on record that the appellant has worked as Assistant Director, Deputy Director, Deputy Director General, Director General in-charge, Member-Board of Governors, Chairman-Board

of Governors, Director General in CCRH from May 2008 till the notification. In addition, the appellant worked as Assistant Director, Deputy Director, as technical head in CCRH. On perusal of the various posts held by the appellant from May 2008 onwards, it is to be considered whether the same would be as a head of a department.

20. The workflow of the AYUSH Department, Government of India (Allocation of Business Rules, 1961) provides for organizational set up. The same is reflected at Page No.433 of the appeal. As per the Allocation of Business Rules, the Assistant Director is having independent control over the particular division. When the organizational set up does not provide for a head of the department, it is for the Court to examine whether a particular post would be head of that division. On consideration of the organizational set up in that view, Assistant Director though below the rank of Director General, the work and responsibilities entrusted to the Assistant Director are independent.

21. The Search Committee having examined the qualification and eligibility found that the different positions held by the appellant would be in the capacity of head of the department. It is not open to the Court to substitute the opinion unless *mala fides* are being

demonstrated in the process of Selection. In the present case, no such allegations are alleged in the Selection process.

22. The appellant was responsible for discharging the functions of the Department and various sections/Centres were reporting to the appellant. Merely because the appellant was reporting to another rank/designation, it cannot be held that he was not heading the Department/Division.

23. The roles and responsibilities conferred on the appellant and the same being discharged, as depicted in the appeal memo, having been considered by the Selection Committee and the roles and responsibilities discharged having been found to be as the head, the appellant would qualify the eligibility criteria as 'leader' as contemplated under Section 4 of the Act of 2020 and as head of the department as per Explanation to Section 4 of the Act of 2020.

24. Another argument that only few positions held would qualify to be head of the department, the appellant does not possess 10 years experience as a leader is not acceptable. If the roles and responsibilities discharged/occupied by the appellant from 2008 onwards is considered, the same were independent and would qualify as a leader.

25. The Hon'ble Supreme Court while dealing with interference with the appointments made on recommendation of expert bodies in the case of ***Tajvir Singh Sodhi Vs. State of Jammu and Kashmir [2023 SCC Online SC 344]*** has held as under:

“65. ... it is necessary to preface our judgment with the view that Courts in India generally avoid interfering in the selection process of public employment, recognising the importance of maintaining the autonomy and integrity of the selection process. The Courts recognise that the process of selection involves a high degree of expertise and discretion and that it is not appropriate for Courts to substitute their judgment for that of a selection committee. It would be indeed, treading on thin ice for us if we were to venture into reviewing the decision of experts who form a part of a selection board. ...”

“66. Thus, the inexorable conclusion that can be drawn is that it is not within the domain of the Courts, exercising the power of judicial review, to enter into the merits of a selection process, a task which is the prerogative of and is within the expert domain of a Selection Committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene.

67. Thus, Courts while exercising the power of judicial review cannot step into the shoes of the Selection Committee or assume an appellate role to examine whether the marks awarded by the Selection Committee in the viva-

voce are excessive and not corresponding to their performance in such test. The assessment and evaluation of the performance of candidates appearing before the Selection Committee/Interview Board should be best left to the members of the committee.

26. In the case of **Basavaiah (DR.) Vs. Dr. H.L. Ramesh and others [(2010)8 SCC 372]** held as under:

“38. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very limited role particularly when no mala fides have been alleged against the experts constituting the Selection Committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realise and appreciate its constraints and limitations in academic matters.”

Underlining mine.

27. The Search Committee was constituted as per Act of 2020 headed by the Cabinet Secretary. The Search Committee after examining the eligibility of the appellant has recommended his appointment as Chair-person of the National Commission for Homoeopathy. The recommendation of the Search Committee was before Appointment Committee of the Cabinet [“ACC”]. ACC

after examining the recommendation of the Search Committee approved the appointment of the appellant as Chairperson for a period of four years. The Search Committee while recommending the appellant has considered the eligibility criteria, qualification and experience to appoint him as the Chairperson of the Commission. The suitability has been arrived at on the basis of the academic qualifications, experience in academic and research, experience as head of the organization, administrative experience while serving in different positions.

28. The Search Committee being expert body after considering the positions held by the appellant arrived at a conclusion that he fulfills the criteria of 10 years of experience as leader. In the absence of any material placed before the Court to prove that the process of selection by the Selection Committee suffers from *mala fides*, it is not open to this Court to substitute its opinion as held by the Hon'ble Supreme Court (*supra*).

29. The Expert Committee after considering various aspects, recommended the appellant to be eligible as the Chairperson of the National Commission. We find no reasons to interfere with the decision of the Selection Committee.

30. Learned Single Judge without considering the scope of interference in the selection process, by holding that the appellant does not possess 10 years of experience as a leader, committed an error in substituting to the experts' view in the absence of any material on record to demonstrate *mala fides*. The exercise to find out whether the appellant would qualify as a leader while being technical head is within the prerogative and domain of the Search Committee. The said aspect is the task of the academicians and the experts. The Court cannot sit in appeal over the decision of the experts.

31. In view of the analysis above, this Court is of the view that learned Single Judge committed an error in interfering with the order of appointment by substituting the view of the Search Committee being Committee of experts.

32. Hence, the following;

- (i) Writ Appeal No.242/2024, Writ Appeal No.366/2024 are allowed.
- (ii) Writ Appeal Crob.2/2024 is dismissed.
- (iii) The order of learned Single Judge in Writ Petition No.15859/2021 c/w Writ Petition No.15590/2021 dated

10.01.2024 is hereby set aside. The writ petitions are also dismissed.

In view of disposal of the appeals and the Cross-objection, the interlocutory applications would not survive and they stand disposed of accordingly.

**Sd/-
(N. V. ANJARIA)
CHIEF JUSTICE**

**Sd/-
(K. V. ARAVIND)
JUDGE**

VBS