M. C. GUPTA ETC.

v.

A. K. GUPTA & ORS., ETC.

December 15, 1978

[V. R. KRISHNA IYER AND D. A. DESAI, JJ.]

Indian Medical Council Act, 1956, *S.* 2(*f*) *read with General Regulations, R.* 4, *"Medicine", includes specialist branch of cardiology—"Research experience", computation, holding of specified post whether pre-requisite while conducting research—"Teaching experience" in foreign institutions when can be taken into account.*

The appellant Dr. M. C. Gupta and the sixth respondent Dr. R. N. Tandon, were appointed to the post of 'Professor in medicine in State Government Medical Colleges. The appointments were made by the State Government, on the recommendation of U.P. Public Service Commission, which had earlier with the assistance of four medical experts, selected them through an interview. The respondents No. 1, 2 and 3 who were also candidates for the post filed a writ petition in the High Court, challenging the selection and appointment of Dr. M. C. Gupta and Dr. R. N. Tandon, though no *mala fides* were attributed to the Commission. A Single Judge of the High Court issued a writ quashing the selection, on the ground that neither of the two selected doctors had the requisite teaching experience and that neither of them was qualified for selection as Professor of Medicine. In appeal, the appellate Bench of the High Court confirmed the order quashing the selections, and further quashed the order of appointment, remitting the matter to the Commission, directing it to make fresh selection in consonance with the interpretation put upon the relevant regulation, by the court.

Allowing the three connected appeals, one by Dr. M. C. Gupta, and two by the State of U.P., the Court

HELD : I. Medicine includes cardiology. The Medical Council of India, a body composed of experts, have in the regulations clearly manifested their approach when they said that cardiology is a specialist branch under medicine. Where general subject such as medicine or surgery is being dealt with, in a regulation, the specialist branch under it would be covered, though not *vice versa*, because if one wants to hold a post in the specialist branch, he must of necessity have teaching experience in the specialist branch. [859 G, 860 D, 861 E].

II. If general regulation 4 is properly analysed for the purpose of computing research experience, the prerequisite is that the research must be done after obtaining the requisite post-graduate qualification. It has no reference to the post held by the person engaged in research at the time of conducting the research, and, to say that holding of the post specified in the regulation, is a pre-requisiite while conducting research, is to read in regulation 4, what is not prescribed thereunder. [862 D-F].

III. Teaching experience in foreign teaching institutions can be taken into account, but, they must be some recognised institutions of repute and not any institution outside the territory of India. [865 G, 866 C].

A *State of Bihar & Anr.* v. *Dr. Asis Kumar Mukherjee & Ors.*, [1975] 2 SCR 894; followed.

Vade Mecum :

In view of the twilight zone of Court's interference in appointment to posts requiring technical experience made consequent upon selection by Public Service Commission, aided and advised by experts having technical experience B and high academic qualifications in the specialist field, probing teaching/research experience in technical subjects, within the framework of Regulations framed by the Medical Council of India, under s. 33 of the Indian Medical Council Act, 1956 and approved by the Government of India, the courts should be slow to interfere with the opinion expressed by the experts, unless there are allegations of *mala fides* against them. [857 E-G].

C *University of Mysore & Anr.* v. *C. D. Govinda Rao & Anr.*, [1964] 4 SCR 575; applied.

State of Bihar & Anr. v. *Dr. Asis Kumar Mukherjee & Ors.*, [1975] 2 SCR 894; explained.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 357/77 and 1142-1143/78.

D

Appeals by Special Leave from the Judgment and Order dated 28-8-75 and 17-9-75 of the Allahabad High Court in Special Appeal Nos. 233, 254 and 264 of 1975.

L. N. Sinha, Santosh Chatterjee, Vineet Kumar and *P. P. Singh* for the Appellant in CA 357/77.

E

S. N. Kacker, Sol. General, *M. V. Goswami* and *Rajiv Dutt* for the Appellants in CA 1142-1143/78 and RR 4 and 5 in CA 357/77.

A. K. Sen, S. C. Patel and *Bishamber Lal* for Respondent No. 1 in All the appeals.

F *V. M. Tarkunde, S. C. Patel* and *Bishamber Lal* for R. 2 in all appeals.

G. L. Sanghi, S. C. Patel and *Bishamber Lal* for R. 3 in all appeals.

Rajiv Dutt and *P. C. Kapur* for R. 6 in CA 357/77.

G *Santosh Chatterjee* and *Vineet Kumar* for R. 6 in CA 1142/78.

The Judgment of the Court was delivered by

DESAI, J. Respondents Nos. 1, 2 and 3 in Civil Appeal No. 357/77 filed writ petition No. 5462/74 challenging the selection by U.P. Public Service Commission ('Commission' for short) and subsequent appoint- H ment by U.P. State Government of appellant and respondent No. 6 to the post of Professor in Medicine in State Government Medical Colleges. A learned single Judge of the High Court quashed the selec-

tions. Four appeals came to be preferred against the judgment quashing selections. Special Appeal No. 232/75 was filed by Dr. R. N. Tandon, respondent No. 6; Special Appeal No. 233 of 1975 was preferred by the present appellant Dr. M. C. Gupta; Special Appeal No. 264 of 1975 was preferred by the State of U.P.; and Special Appeal No. 256 of 1975 was filed by respondents Nos. 1, 2 and 3 in Civil Appeal No. 357/77 against that part of the judgment of the learned single Judge by which appointment of appellant Dr. M. C. Gupta and respondent No. 6, Dr. R. N. Tandon, was not quashed.

The appellate Bench partly allowed the appeals and while confirming the order quashing the selection of Dr. M. C. Gupta and Dr. R. N. Tandon, also quashed their appointment and remitted the matter to the Commission directing it to re-examine the relative merits of all candidates in the light of the interpretation put upon the relevant regulations by the Court. Arising from this common judgment, three appeals by special leave are preferred to this Court. Civil Appeal No. 357/77 is preferred by Dr. M. C. Gupta and Civil Appeals Nos. 1142 & 1143 of 1978 are preferred by the State of U.P.

To focus the attention on the contention raised at the hearing of these appeals, a brief resume of facts would be advantageous. The Commission invited applications for two posts of Professor of Medicine in the State Medical Colleges as per its advertisement dated 8th September 1973, subsequently extending the last date for receipt of applications to 30th March 1974, Dr. M. C. Gupta and Dr. R. N. Tandon (referred to as the 'appellants') along with Dr. A. K. Gupta, Dr. Brij Kishore and Dr. S. N. Aggarwal (referred to as 'respondents 1, 2 and 3), applied for the post. The advertisement set out the prescribed qualifications for the post under Regulations made under s. 33 of the Indian Medical Council Act, 1956 ('Act' for short). They were in respect of the academic attainments, teaching/research experience, upper age limit, etc. The Commission was assisted by four medical experts in the matter of interview, selection and recommendation of suitable candidates satisfying the requisite qualifications for the post. The Commission selected Dr. M. C. Gupta and Dr. R. N. Tandon for the two posts of Professor in Medicine and recommended their names to the State Government. Respondents 1, 2 and 3 who were also candidates for the post, presumably came to know about the recommendation and moved the High Court on 13th September 1974 by way of a writ petition questioning the selection. The petition was admitted and *rule nisi* was issued. An *ex parte* interim stay restraining the Government from making the appointments was granted but sub-

A sequently it was vacated. The State Government accepted the recommendations of the Commission and appointed Dr. M. C. Gupta and Dr. R. N. Tandon as Professors of Medicine on 30th October 1974. The petition was subsequently amended questioning the order of appointment. As already stated above, the learned single Judge held
B that neither Dr. M. C. Gupta nor Dr. R. N. Tandon had the requisite teaching experience and that neither of them was qualified for selection as Professor of Medicine and accordingly allowed the writ petition and quashed the selection. By a common judgment in the appeals arising from the judgment of the learned single Judge, the appellate Bench confirmed the order quashing the selections and further quashed the
C order of appointment and remitted the matter to the Commission directing it to make fresh selection in consonance with the interpretation put upon the relevant regulations by the Court. Three appeals are before us. These three appeals obviously were heard together and are being disposed of by this common judgment.

D The selection and appointment of Dr. M.C. Gupta and Dr. R. N. Tandon were questioned only on one ground in that each of them did not satisfy the requisite teaching/research experience. The controversy in these appeals centres round the question of teaching/research experience and the relevant regulation in this behalf may be extracted :

Post	Academic qualifications	Subject	Teaching/ Research experience
(b) Professor/ Associate Professor	M.D., M.R.C.P., F.R.C.P., Speciality Board of Internal Medicine (U.S.A.) or an equivalent qualification in the subject.	Medicine	(b) As Reader/ Asstt. Professor in Medicine for 5 years in a Medical College after requisite post-graduate qualification.

Regulation 4 of General Regulations provides as under :

> "4. 50% of the time spent in recognised research under the Indian Council of Medical Research or a University or a Medical College, after obtaining the requisite post-graduate qualification be counted towards teaching exerience in the same or an allied subject provided that 50% of the teaching experience shall be the regular teaching experience."

H The teaching/research experience claimed by each of the appellants may be set out and then the comments of each side in respect of each item may be examined :

Experience of Dr. M. C. Gupta.

I.	25th January 1965 to 19th July 1971—Lecturer in Cardiology in the Department of Medicine in S.N. Medical College, Agra.	About 6 years and 6 months' teaching experience.
II.	July 71 up to the date of appointment as Professor—Reader in Medicine in S. N. Medical College, Agra.	About 3 years, 2 months' teaching experience.

Experience of Dr. R. N. Tandon

I.	1st October 1965 to 31st October, 1966—Post doctoral teaching fellow, Department of Medicine, State University of New York at Buffalo, U.S.A.	One year's teaching experience.
II.	Ist February, 1967 to 31st January 1968—As a Lecturer while posted as Pool Officer Department of Medicine in G.S.V.M. Medical College, Kanpur.	One year's teaching experience
III.	5th April 1968 to 4th July 1969—Post doctoral research fellow, Department of Medicine in G.S.V.M. Medical College, Kanpur.	15 months' teaching experience.
IV.	29th July 1969 to 30th October 1974— (date of appointment as Professor)—Assistant Professor of Medicine, State University of New York, at Buffalo U.S.A.	Over 5 years' teaching experience.

Before the rival comments are probed and analysed, it would be necessary to keep in view the twilight zone of Court's interference in appointment to posts requiring technical experience made consequent upon selection by Public Service Commission, aided by experts in the field, within the framework of Regulations framed by the Medical Council of India under s. 33 of the Indian Medical Council Act, 1956, and approved by the Government of India on 5th June 1971. When selection is made by the Commission aided and advised by experts having technical experience and high academic qualifications in the specialist field, probing teaching/research experience in technical subjects, the Courts should be slow to interfere with the opinion expressed by experts unless there are allegations of *mala fides* against them. It would normally be prudent and safe for the Courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the Courts generally can be. Undoubtedly, even such a body if it were to contravene rules and regulations binding upon it in making the selection and recommending the selectees for appointment, the Court in exercise of extraordinary jurisdiction to enforce rule of law, may interfere in a writ petition under Article 226. Even then the Court, while enforcing the rule of law, should give due weight

A to the opinions expressed by the experts and also show due regard to its recommendations on which the State Government acted. If the recommendations made by the body of experts keeping in view the relevant rules and regulations manifest due consideration of all the relevant factors, the Court should be very slow to interfere with such recommendations (see, *The University of Mysore & Anr.* v. *C. D.* B *Govinda Rao & Anr.*,(1). In a more comparable situation in *State of Bihar & Anr.* v. *Dr. Asis Kumar Mukherjee, and Ors.*,(2) this Court observed as under :

> "Shri Jagdish Swaroop rightly stressed that once the right to appoint belonged to Government the Court could not usurp it merely because it would have chosen a different person as C better qualified or given a finer gloss or different construction to the regulation on the score of a set formula that relevant circumstances had been excluded, irrelevant factors had influenced and such like grounds familiarly invented by parties to invoke the extraordinary jurisdiction under Art. 226. True, no speaking order need be made while appointing a D government servant. Speaking in plaintitudinous terms these propositions may deserve serious reflection. The Administration should not be thwarted in the usual course of making appointments because somehow it displeases judicial relish or the Court does not agree with its estimate of the relative E worth of the candidates. Is there violation of a fundamental right, illegality or a skin error of law which vitiates the appointment".

With these blurred contours of periphery of jurisdiction under Article 226 to interfere with selections made by an independent body like Public Service Commission not attributed any *mala fides,* assisted F by four experts in the field who presumably knew what constituted teaching/research experience, what institutions are treated prestigious enough, in which teaching/research experience would be treated valuable, we may examine the rival contentions.

Two contentions which have found favour with the High Court must engage our attention : (1) In order to satisfy the experience G qualification for the post of Professor in Medicine, the teaching/research experience must be in medicine and *stricto sensu* Cardiology being a separate branch, experience of teaching/research in Cardiology cannot be availed of, and (2) any such experience to satisfy the regulation must be acquire while holding the post of Reader or Assistant Professor (including the post of Lecturer) in Medicine. H

The controversy centres round the connotation of the expression

(1) [1964] 4 SCR 575.
(2) [1975] 2 SCR 894.

'medicine'. Does it include Cardiology or Cardiology is a separate Branch ? Section 2(f) of the Act defines medicine to mean modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery. This is too wide a definition to assist us in the problem posed for the decision of the Court. In the world of medical science there are general subjects and specialities. Medicine and surgery are general subjects. To wit, Cardiology is a speciality in medicine and orthopaedics is a speciality in surgery. Even the regulation from page 8 onwards bears the heading 'Specialist Branch under Medicine and Surgery'. Cardiology finds its place as a specialist branch under medicine. The relevant regulation requires teaching/research experience in medicine. Contention is, if any one who has teaching/research experience in Cardiology, could he be said to have such experience in medicine ? In this context we must recall regulation 4 which provides that 50% of the time spent in recognised research after obtaining the requisite post-graduate qualification shall be counted towards teaching experience in the same or allied subject provided that 50% of the teaching experience shall be the regular teaching experience. If research in allied subject can be taken to satisfy the requisite experience, teaching experience in a speciality under the general head could not be put on an inferior footing. Undoubtedly, if the post is in a specialist department, the requisite teaching/research experience will have to be in the speciality. To illustrate, if one were to qualify for being appointed as Professor/ Associate Professor of Cardiology, his teaching experience must be in Cardiology though his research experience could as well be in Cardiology or allied subject. A person having such experience in the general subject medicine cannot qualify for the speciality. That it what distinguishes the speciality from the general subject. This becomes clear from the fact that in a number of hospitals there may not be posts in specialist branches and someone working in the general department may be assigned to do the work of specialist branches. If a particular hospital has not got Cardiology as a specialist branch, a Reader or Assistant Professor in the Department of Medicine may be required to look after Cardiology cases and teaching of Cardiology as a subject. In that event he is certainly a Reader/Assistant Professor in Medicine teaching one of the subjects, viz., Cardiology which again forms part of the general curriculum of the subject of medicine. Therefore, it is not proper to divorce a specialist branch subject from the general subject. It cannot be seriously contended that medicine does not include Cardiology. To be qualified for the specialist branch of Cardiology, the minimum academic qualification is M.D. (Medicine). This would clearly show that after acquiring the general qualification one can take the specialist branch. If any other approach is adopted it would work

A to the disadvantage of the person who while being posted in the Department of Medicine, is asked to teach a subject which is necessary for being taught for qualifiifying for M.D. but which can be styled as speciality. He would simultaneously be denied the teaching experience in the subject of Medicine. An extreme argument was urged that in adopting this approach it may be that somebody may be working in B different specialist branches such as Neurology, Gastroentrology, Psychiatry, etc. and each one would qualify for being appointed as Professor of Medicine without having even a tickle of experience on the subject of general medicine. This wild apprehension need not deter us because it should be first remembered that any one going into C specialist branch under medicine has to be M.D. (Medicine). Thereafter, if he wants to become a Professor in the specialist branch such as Cardiology, the academic qualification required is to hold a degree of D.M. in the Specialist Branch. This becomes clear from a perusal of the regulations. It is not necessary, therefore, to go into the dictionary meaning of the expression 'medicine' to determine whether it D includes Cardiology. The Medical Council of India, a body composed of experts have in the regulations clearly manifested their approach when they said that Cardiology is a specialist branch under medicine. *Ipso facto,* medicine includes Cardiology. It was not disputed that one qualifying for M.D. (Medicine) has to learn the subject of Cardiology. And it must be remembered that the four experts aiding and advising E the Commission have considered teaching experience in Cardiology as teaching experience in Medicine. The counter-affidavit on behalf of the Commission in terms states that medicine is a wide and general subject and includes Cardiology whereas for the post of Professor of Cardiology a further two years' special training in Cardiology or D.M. in Cardiology after M.D. in Medicine has been laid down as a requisite F qualification by the Medical Council. It is further stated that teaching experience in Cardiology will make the person eligible for the post of Professor of Medicine. That was the view of the experts who assisted the Commission. Incidentally it may be mentioned that Mr. V. M. Tarkunde, learned counsel for respondents 1, 2 and 3 took serious exception to giving any weight to the counter-affidavit because it has G not been sworn to by any expert aiding or advising the Commission or by any officer or Member of the Commission but by an Upper Division Assistant whose source of knowledge is the legal advice tendered to him. In paragraph 1 of the affidavit the deponent says that he has been deputed by the Commission to file the counter-affidavit on their behalf and as such he is fully acquainted with the facts deposed to in H the affidavit. It is our sad experience that responsible authorities avoid filing affidavits in courts when it behoves them to assist the Court and facilitate the decision of the questions brought before the Court

but on this account alone we would not wholly ignore the counter-affidavit. A

Some documents were brought to our notice showing that in State University of New York at Buffalo, U.S.A. the Assistant Professor of Cardiology is designated as Assistant Professor of Medicine. Further, in the Agra University Calendar, Cardiology is included in the Department of Medicine. Similarly it was also pointed out that the Department of Medicine in the University of Manchester includes Lecturer in Cardiology. Apart from this administrative arrangement, it could not be seriously disputed that Cardiology is a specialist branch under medicine and it could not be wholly divorced from medicine. Under the general head 'medicine' number of subjects are to be taught, one such being Cardiology. If a teacher is asked to teach Cardiology as one of the subjects for general medicine, could he be at a disadvantage by being treated as having not acquired teaching experience in medicine? Even under general medicine, apart from medicine as a subject, there are numerous other subjects and papers and there would be one or more persons incharge of one or more subjects and papers and indisputably each one would be gaining experience in general medicine. If general medicine is to be restricted only to the paper on medicine, it would lead to a startling result, as startling as it was sought to be urged when it was said that a person teaching Neurology could not be said to be gaining teaching experience in medicine. The matter has to be looked at from this angle, *viz.*, that where general subject such as medicine or surgery is being dealt with in a regulation, the specialist branch under it would be covered, though not vice versa, because if one wants to hold a post in the specialist branch he must be of necessity have teaching experience in the specialist branch. In reaching this conclusion the seniority list maintained branch wise would hardly be helpful. Therefore, it is not possible to agree with the High Court that the subject of medicine under the regulation is exclusive of the other subjects mentioned therein and, therefore, does not include Cardiology. B C D E F

The second contention which found favour with the High Court was that the requisite teaching or research experience must be acquired while holding the post set out in the regulation in that subject. In other words, the view of the High Court is that the teaching/research experience must be acquired while holding the post of Reader/Assistant Professor in Medicine for five years in a Medical College. The High Court placed the emphasis on the experience acquired while holding the post. The relevant regulation requires teaching/research experience as Reader/Assistant Professor (which includes Lecturer) G H

A in Medicine for five years in a Medical College. Regulation 4 has to be read along with specific regulation. Regulation 4 clearly shows that 50% of the time spent in recognised research in the same or allied subject will be given credit provided that 50% of the teaching experience shall be regular teaching experience. The specific regulation prescribing the qualification will have to be read subject to the B general regulation prescribed under regulation 4 because the experience qualification prescribed in specific regulation must be calculated according to the formula prescribed in general regulation no. 4. The specific regulation requires 5 years' teaching/research experience. In calculating the research experience in the light of regulation 4, 2½ G years' experience shall be specifically teaching experience and credit can be given to the extent of 50% of the time spent in recognised research as prescribed in the regulation, which experience can be in the same subject, viz., the subject for which the recruitment is being made or in allied subject. So far there is no dispute. The question is : while acquiring research experience, is it incumbent that the person D conducting research must also hold of necessity designated post in the regulation ? Now, if general regulation 4 is properly analysed for the purposes of computing research experience, the pre-requisite is that the research must be done after obtaining requisite post-graduate qualification. It has no reference to the post held by the person engaged in research at the time of conducting the research. The heading E is 'teaching/research experience'. The dichotomy will have to be applied to teaching and research experience for the purpose of computation. So far as teaching experience is concerned, it must be acquired while holding the post specified in the regulation. But to say that holding of the post is a pre-requisite while conducting research is to read in regulation 4 what is not prescribed thereunder. The specific F regulation prescribing qualification will have to be read subject to general regulation 4 and not *vice versa*. This also becomes manifest from the fact that general regulation 4 also provides that 50% of the teaching experience shall be regular teaching experience meaning thereby that if someone is engaged exclusively in research, he cannot claim to satisfy G the teaching experience qualification prescribed in the regulation. Reading specific regulation with general regulation 4, it emerges that teaching experience shall be acquired while holding the particular post specified therein and the research experience can be taken into account if the person is engaged in research after obtaining post-graduate qualification and it has nothing to do with the holding of the H post. One may be engaged as a research scholar and holds no teaching post. The research is hardly related to post though capacity for research is directly related to academic attainment. That has been

taken care of. Teaching it indisputably related to the post because a higher post may entail greater responsibility for coaching in higher classes. This conclusion is reinforced by the language of general regulation 4 which permits recognised research under the Indian Council of Medical Research which body may not have such hierarchical posts of Lecturer or Assistant Professor or Reader. These three designations are to be found in teaching institutions and not in research institutions. If it were, therefore, to be held that even while acquiring research experience one must hold the post of either Reader or Assistant Professor, it would discourage many persons conducting research under the Indian Council of Medical Research. It is, therefore, not possible to agree with the generalisation made by the High Court that teaching/research experience to qualify for the post of Professor must be acquired while working as a Reader or Lecturer.

Having cleared the ground about the interpretation of requisite regulations, we must now turn to examine the two individual cases.

In re :*Dr. M. C. Gupta.*

The experience qualification of Dr. M.C. Gupta has been extracted above. There is no dispute between the parties that he was appointed and was working as Reader in Medicine in S.N. Medical College, Agra, from 28th July 1971 till 30th March 1974 which was the last date by which applications had to be submitted to the Commission. This would give him a teaching experience of 2 years 8 months and 10 days.

Dr. Gupta also claims teaching experience, being a Lecturer in Cardiology in the Department of Medicine, S. N. Medical College, Agra, from 25th January 1965 to 19th July 1971, in the aggregate period of 6 years, 6 months and 24 days. There is a serious dispute between the parties whether Dr. Gupta is entitled to get credit for teaching experience while working as Lecturer in Cardiology. On the view that we have taken that Cardiology is a specialist branch under medicine and, therefore, a Lecturer in Cardiology could be said to be a Lecturer in one of the subjects under general medicine and hence he had requisite experience as Lecturer in Medicine. However, Dr. Gupta has produced a certificate issued by the Principal and Chief Superintendent, S.N. Medical College & Hospital, Agra, dated 19th September 1974 in which it is stated that 'Dr. Gupta joined the Department of Medicine as Lecturer in Cardiology on 25th January 1965 and continued till July 19, 1971 when he was appointed as Reader in Medical by Public Service Commission'. It is further certified by

A the Principal & Chief Superintendent that 'Dr. Gupta was actively involved in patient-care, teaching of undergraduates and post-graduates in general medicine in addition to conducting Cardiac Out Patient, looking after cardiac beds and taking Cardiology lectures during his tenure as Lecturer in Cardiology, as Cardiology forms a part of general B medicine in this college and there is no separate Department of Cardiology here'. There is another certificate issued by Dr. K. S. Mathur, Professor & Head, Department of Medicine (RD), dated 17th September 1974, in which it is in terms stated that Dr. Gupta was actively involved in the patient care and teaching of undergraduates and post-graduates in General Medicine in addition to Cardiology during this C period. Further, Dr. Gupta used to be the Senior Physician to attend to Emergencies of all medical cases on a particular day of week and he looked after indoor beds of general medical units during leave arrangements. He was also incharge of T.B. Clinic for a period of one month. It was further stated that Dr. Gupta had been assigned 'Special Clinics' to 5th year and 3rd year and 'Long Clinics' to final D year students from time to time in addition to Cardiac Clinics and Cardiology lectures. He was also taking regular classes in clinical methods for third year and has also been called upon to teach them kidney diseases. There are further references in the certificate which we may ignore for the time being. Dr. Gupta also produced a certificate issued by Professor of Clinical Medicine, S. N. Medical College, E Agra, which, *inter alia,* states that Dr. Gupta was associated from time to time with teaching and patient care in general medicine and he was also actively associated with teaching of post-graduates in general medicine in the way of clinical conferences, seminars, etc. He was also incharge of beds in general medicine in Professors' Unit in the F leave vacancy. A notice dated 24th October 1970 issued by the Deparmtent of Medicine, S. N. Medical College, Agra, was also brought to our notice in which it was shown that Dr. Gupta was to be the Senior Physician on call on every Tuesday. It would thus appear that even if Dr. Gupta was designated as Lecturer in Cardiology for the period 25th January to July 19, 1971, undoubtedly he was teach-G ing general medicine to undergraduate students and to some post-graduate students also and this is testified by persons under whom he was working. It would be unwise to doubt the genuineness of these certificates. Therefore, even apart from the fact that Cardiology is a part of medicine, the teaching experience acquired while holding the post of Lecturer in Cardiology, was teaching experience in subject which subH stantially formed part of general medicine and over and above the same, he was also working as Lecturer in Cardiology and, therefore, the Commission was amply justified in reaching the conclusion that Dr. Gupta

had the requisite teaching experience qualification and the High Court was in error in quashing the selection of Dr. M. C. Gupta on this ground.

Mr. L. N. Sinha, learned counsel, also wanted us to examine the research experience of Dr. M. C. Gupta when he pointed out that Dr. Gupta had published as many as 40 research papers in leading medical journals in India during 10 years he worked as Lecturer/Reader and that he had also been a recognised appraiser for the thesis submitted for the award of Doctor of Medicine. Mr. Sen seriously objected to our examining this contention because Dr. Gupta himself never claimed any credit for research experience. Undoubtedly, the counter-affidavit on behalf of the Commission refers to having taken into consideration the research experience of Dr. Gupta but the affidavit is blissfully vague on the question which research experience was examined by the Commission. Therefore, we would not take into account the research experience claimed on behalf of Dr. Gupta.

In re : Dr. R. N. Tandon.

We have already extracted above the teaching/research experience qualification claimed on behalf of Dr. Tandon. Mr. Kacker, learned Solicitor General requested us to start examining each item of experience commencing from the last one as first. Before we proceed to examine each item of experience claimed by Dr. Tandon, one contention raised on behalf of the respondents must be dealt with. It was urged that wherever the regulations prescribe teaching or research experience, it must be one acquired in an institution in India or in any foreign institution recognised by the Medical Council of India or the Government of India. It is not necessary to examine this argument in depth because the point could be said to have been concluded by *A. K. Mukherjee's* case, wherein same set of regulations came in for consideration of this Court and in which it was seriously contended that the teaching experience specified in regulations in question must be acquired in teaching institutions in India and, therefore, any teaching experience in a foreign country cannot be taken into consideration. This contention was in terms negativated simultaneously negativing the other extreme submission that teaching experience from any foreign institution is good enough, and after referring to sections 12, 13, and 14, it was held that those which are good enough for the aforementioned sections, are good enough for the teaching experience gained therefrom being reckoned as satisfied. The matter undoubtedly was not further pursued by this Court because the final decision was left to the Commission.

A Proceeding in the order suggested by Mr. Kacker it is claimed that Dr. Tandon worked as Assistant Professor of Medicine, State University of New York at Buffalo from 29th July 1969 to 30th October 1974. This includes some period subsequent to the last date for submitting application to the Commission and we would exclude that B part of the experience claimed by Dr. Tandon. Therefore, Dr. Tandon claims to be working as Assistant Professor of Medicine from 29th July 1969 to 30th March 1974 which was the last date for submitting the application to the Commission. Computing the period, he would have teaching experience of four years, six months and one day.

C It was also said that even if teaching experience in foreign teaching institution is to be taken into account, they must be some recognised institutions of repute and not any institution outside the territory of India. That of course is true. In *A. K. Mukherjee's* case the pertinent observation is as under :

D

> "Teaching institutions abroad not being ruled out, we consider it right to reckon as competent and qualitatively acceptable those institutions which are linked with, or are recognised as teaching institutions by the Universities and organisations in Schedule II and Schedule III and recog- E nised by the Central Government under s. 14. Teaching institutions as such may be too wide if extended all over the globe but viewed in the perspective of the Indian Medical Council Act, 1956, certainly they cover institutions expressly embraced by the provisions of the statute. If those institutions are good enough for the important purposes of F ss. 12, 13 and 14, it is reasonable to infer they are good enough for the teaching experience gained therefrom being reckoned as satisfactory."

But it could hardly be urged with some confidence that the State University of New York at Buffalo would not be an institution of repute. An attempt was made to refer to the Schedules, not upto date, to the G Act published by the Medical Council of India showing recognised institutions. In fact, the Schedules set out recognised degrees, certificates and diplomas of various Universities and certain examining Boards of U.S.A. being recognised by the Medical Council of India. This brochure hardly helps in coming to conclusion one way or the other. It H refers to degrees and the Boards awarding the degrees and diplomas. It does not refer to teaching institutions. It nowhere shows that the certificates and diplomas issued by the State University of New York at

Buffalo would not be under one of the American Boards and, therefore, it is not recognised. Such a contention was not even urged before the High Court or specifically in affidavits so that factual material could have been more carefully examined. The experts aiding and advising the Commission must be quite aware of institutions in which the teaching experience was acquired by Dr. Tandon and this one is a reputed University.

It was, however, contended that there is no proof in support of the submission that Dr. Tandon was working as Assistant Professor of Medicine at State University of New York at Buffalo, commencing from 29th July 1969. Dr. Tandon has produced a certificate, Annexure CA. 5 issued by Associate Professor of Medicine, Director Angiology Department, Buffalo General Hospital dated 3rd June 1971, in which it is stated that Dr. Tandon is an Assistant Professor of Medicine in the Department of Medicine on the full time staff of the Buffalo General Hospital having an annual salary of £ 15,000. Mr. Tarkunde urged that this certificate does not show that Dr. Tandon was appointed effective from 29th July 1969. Further, exception was taken to the certificate in that it is issued by the Buffalo General Hospital which the certificate does not show to be a teaching institution. If it was not a teaching institution, one would fail to understand how it had a post of Assistant Professor of Medicine. In a non-teaching hospital there could not be a post of Assistant Professor. Therefore, the very fact that Dr. Tandon was shown to be an Assistant Professor of Medicine, by necessary implication shows that Buffalo General Hospital was a teaching institution under State University of New York. In this connection reference may be made to a certificate dated 12th September 1974 issued by James P. Nolan, Professor of Medicine and Head, Department of Medicine, Buffalo General Hospital, in which it is stated that since July 1969 Dr. Tandon has been a teacher in general medicine at the Buffalo General Hospital. This removes any doubt about the commencement of apointment of Dr. Tandon as Assistant Professor at the Buffalo General Hospital. Mr. Tarkunde however urged that the certificate does not appear to be genuine in view of the inquiry made by a telegram (p. 257, Vol. II of the record) from the authorities incharge of the Buffalo General Hospital and the reply received that Dr. Tandon is in India and, therefore, cannot get any information as he left instructions not to release it. Who has sent this telegram is left to mere speculation. And who sent the reply is equally unknown. It would be improper to reject the certificate on such nebulous ground and we

A can do no better than reject the contention of Mr. Tarkunde as unworthy of consideration as was done in *A. K. Mukherjee's* case wherein it was observed as under :

> "There are 6 certificates now on record and the 1st respondent is stated to have taken part in teaching work as
B Registrar. You cannot expect to produce those surgeons in Patna in proof and unless serious circumstances militating against veracity exist fair-minded administrators may, after expert consultations, rely on them".

Therefore, we see no justification for rejecting the certificates. It
C would appear that Dr. Tandon had the teaching experience while holding the post of Assistant Professor of Medicine for a period of four years, six months and one day. The minimum requirement is five years.

We would next examine one more item of experience claimed by
D Dr. Tandon in that he was post-doctoral teaching fellow, Department of Medicine, State University of New York at Buffalo from 1st October 1965 to 31st October 1966. Now, undoubtedly this was teaching experience in the same University where he was subsequently Assistant Professor. The grievance is that he was a Fellow and neither a Lecturer nor an Assistant Professor. What does 'Fellow' in the
E University connote ? A certificate has been produced, Annexure CA. (page 50, Vol. IV) by Dr. Tandon issued by Eugine I. Lippasch, Professor & Administrative Associate Chairman of the Department of Medicine, State University of New York at Buffalo, dated 13th October 1966, in which it is stated that Dr. Tandon completed one
F year teaching fellowship in the Division of Cardiology of the Department of Medicine at the State University of New York at Buffalo and the Buffalo General Hospital on October 31, 1966. It is not very clear what is the equivalent of a Fellow in teaching Hospitals in India but Dr. Tandon has also claimed teaching experience from 5th April 1968 to 4th July 1969, being posted as post-doctoral research fellow,
G Department of Medicine in G. S. V. M. Medical College, Kanpur. In this connection, Annexure R-2, produced by none other than some of the contesting respondents shows that during the tenure of Fellowship, Dr. Tandon was expected to take part in the teaching and research activities of the College though he would not be treated as part of the regular establishment of the College. Now, if the certi-
H ficate produced by Dr. Tandon shows that Fellowship included teaching work, it would be unwise to doubt it. Even if 50% of the time spent in these two places is given credit, Dr. Tandon had certainly

more than five years' teaching experience. The Court is not competent to work out figures with mathematical precision. It can broadly examine the question whether the requirement is satisfied or not. Therefore, he had the requisite teaching/research experience and the Commission was fully justified in treating Dr. Tandon as having requisite teaching/research experience. A

B

It thus clearly appears that both Dr. M. C. Gupta and Dr. R. N. Tandon had the requisite qualifications, both academic and experience, and they were eligible for the post for which they had applied and if they were selected by the Commission and appointed by the Government, no exception can be taken to the same. The High Court was, therefore, in error in interfering with the same. Accordingly, all the three appeals are allowed and the writ petition filed by respondents 1, 2 and 3 in the High Court is dismissed with no order as to costs in the circumstances of the case. C

M.R. *Appeals allowed.*