



Neutral Citation Number: [2019] EWCA Civ 236

Case No: C1/2017/3034

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
Queen's Bench Division (Administrative Court)
Mrs Justice Moulder
[2017] EWHC 2556 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/02/2019

Before:

LORD JUSTICE MCCOMBE
LADY JUSTICE KING
and
LORD JUSTICE FLAUX

Between:

The General Medical Council
- and -
Dr Shekhar Chandra

Appellant

Respondent

Ms Eleanor Grey QC (instructed by GMC Legal) for the Appellant
Ms O'Rourke QC and Ms Newbegin (instructed by Medical Defence Shield) for the Respondent

Hearing date: 15th January 2019

ADDENDUM TO JUDGMENT

Lady Justice King:

1. On 18 July 2018, this court heard the appeal of the GMC against an order made by Mrs Justice Moulder on 19 October 2017 whereby she dismissed the first appeal of the GMC from a decision of the MPT granting an application to restore the name of the Respondent, Dr Chandra, to the medical register.
2. By paragraph 94 of the judgment, I indicated the intention of the court to allow the appeal in due course, but that that this would take place only after a further hearing which would deal with important consequential matters. The appeal not having been allowed at that point, Dr Chandra remained, and remains on the medical register pending that anticipated further hearing.
3. At the time the judgment was written, the court was led to understand that the only route whereby Dr Chandra could continue in practice pending the resolution of the outstanding issues, was by there being no order being made in respect of the appeal. At the subsequent directions hearing on 15 January 2019, the court was told by Ms O'Rourke on behalf of Dr Chandra, that this was not in fact the case, and that there is a statutory route whereby the same outcome can be achieved.
4. Section 40A(6) Medical Act 1983 provides:

“(6) On an appeal under this section, the court may-

 - (a) Dismiss the appeal;
 - (b) Allow the appeal and quash the direction;
 - (c) Substitute for the relevant decision any other decision which could have been made by the Tribunal; or
 - (d) Remit the case to the MPTS for them to arrange for a Medical Practitioners Tribunal to dispose of the case in accordance with the directions of the court,

And may make such order as to the costs (or, in Scotland, expenses) as it thinks fit.
5. The outcome sought by this court is that the matter should be remitted to the original tribunal for reconsideration, but that pending that hearing Dr Chandra should be permitted to continue in practice. It is the judgment of this court that in the light of the provisions of s.40A(6) Medical Act 1983, this can be achieved by the court making an order under s.40A(6)(d) for the matter to be remitted to the Medical Practitioners Tribunal for there to be a reconsideration of the case in the light of the judgment of the Court.
6. I do not accept the submission of Ms Grey QC on behalf of the GMC, that the MPTS was *functus officio* after its decision, and that there has therefore to be a quashing order made before an order is made for remission with directions under s40A(6)(d).

7. Counsel however rightly pointed out to the court that the order of Moulder J at the conclusion of the first appeal, should be quashed. This in my judgment leaves the order of the MPT properly in place, but subject to the direction of the court pursuant to s40A(6)(d), that the matter be remitted to the MPT in accordance with the directions found within the accompanying order.
8. The Court has been assured that by this route, which is eminently more satisfactory than that which the court believed was the only course open to it, Dr Chandra will remain on the Register pending the remitted hearing.
9. The purpose of this short addendum is to clarify the position and to record that, had the court been aware of s40A(6) Medical Act 1983, rather than expressing itself as it did at paragraph 94 of the judgment, it would have made the order in the terms now made.

Lord Justice Flaux:

10. I agree

Lord Justice McCombe:

11. I also agree