Case No. CO/3243/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

[2021] EWHC 3628 (Admin)

Royal Courts of Justice

Wednesday, 27 January 2021

Before:

MR JUSTICE ROBIN KNOWLES CBE

B E T W E E N :

SHERAZI Appellant

- and -

GENERAL MEDICAL COUNCIL Respondent

MR R. PARKIN appeared on behalf of the Appellant.

MR P. MANT appeared on behalf of the Respondent.

JUDGMENT

MR JUSTICE ROBIN KNOWLES CBE:

1
This appeal turns very much on its individual facts. It challenges the decision of the medical practitioner's tribunal of 28 July 2020 to remove or erase the claimant from the register. The decision followed a hearing that the claimant did not attend. He did not ask that it be adjourned; indeed, he wrote to say that he was not interested.

2
The claimant had also not attended an earlier substantive hearing over five days between 30 September 2019 and 4 October 2019. The outcome of that earlier hearing was a finding by the tribunal that his fitness to practice was impaired by reason of deficient professional performance. A sanction of 9 months' suspension with review was imposed on that occasion in 2019. The tribunal then stated that at the future review hearing the onus would be on the claimant to demonstrate how he had addressed his deficient professional performance.

3
The tribunal also advised that at that review the tribunal might be assisted if the claimant was able to show a number of matters. These included an audit of his work, an up to date appraisal, a reflective statement explaining the insight he had developed, and the steps he had taken to address areas of concern, a journal setting out his learning and how he was maintaining and improving his medical knowledge and skill, together with documentary evidence of courses attended and completed which were directed at the areas of concern identified, a remediation plan and current testimonials as to current working practice.

4
No material on any of these matters was provided by the claimant to the tribunal on the review in 2020. Some material, it transpires, did exist, a matter known to the claimant but unknown to the tribunal or the General Medical Council. This included the fact of some continuing professional development (CPD) activity to February 2020. No material existed on a number of the matters, including audit, appraisal, reflective statement and journaling.

5
An appraisal was undertaken at the claimant's instigation and using the GMC's form after the review hearing and in September 2020.

6
On this appeal, the claimant seeks to adduce evidence of the material that did exist at the time of the review, and also to adduce the September 2020 appraisal. Through Mr Parkin of counsel his emphasis is on asking the court to order a re-hearing of the review so that both its findings and sanction of July 2020 could be reconsidered in light of the evidence and appraisal. Mr Parkin therefore advances an application for leave to adduce additional evidence, recognising that at least for evidence of material that did exist at the time of the review, the court will consider the position with reference to Ladd v Marshall principles.

7
At one point it had seemed that the claimant had suggested that the GMC should have put before the tribunal at the July 2020 hearing what might be termed "work in progress" in relation to the appraisal. However, it is plain, and I find, that the GMC was not involved in that appraisal, and indeed that the appraisal was not in progress as at July. It was undertaken as a single exercise in September 2020, albeit that it looked at the period of 12 months to that date.

8
Mr Parkin had written in his skeleton argument that --

"At least some of that evidence must have been known to exist by the Respondent. The Respondent was under a duty to disclose that evidence, but does not appear to have done so."

9
Mr Parkin was not able to support the allegation of knowledge contained in that submission on this hearing of the appeal. In addition, it is the case that the GMC had asked the claimant in terms for evidence ahead of the July 2020 hearing, and the claimant had not suggested that there was any evidence, and of course had not supplied any evidence.

10
I should say a little more about the claimant. These matters are not materially in issue and they can be taken substantially from the written argument of Mr Mant for the GMC.

11
The claimant qualified as a doctor in Pakistan before moving to the United Kingdom in 1993. He worked as a consultant radiologist at the Pennine Acute Hospitals NHS Trust between 2010 and late 2014 when he moved back to Pakistan. In February 2015 the trust reported a number of concerns about his professional practice to the GMC.

12
The GMC invited him to undergo a performance assessment. The claimant initially responded by stating that he did not intend to work in the United Kingdom and would not be able to visit. He was invited to agree undertakings including a requirement to submit to a performance assessment if he chose to return to the UK in the future. However, the claimant declined to do so. He was then referred to a non-compliance hearing. That hearing took place on 27 July 2017 and an order of suspension was imposed. Following that suspension the claimant indicated that he would now be willing to undertake a performance assessment which took place on 4 and 5 January 2018. That performance assessment found his performance was "unacceptable" in the area of maintaining professional performance and a "cause for concern" in respect of assessment and working with colleagues. The claimant was offered undertakings but he declined. In an email to the GMC dated 22 January 2019 he said, "Thanks for all the efforts. But I am not interested."

13
The matter was then referred to the tribunal and on to the hearing over five days between 30 September 2019 and 4 October 2019 that I have already mentioned.

14
On this appeal against the decision and sanction reached and imposed by the tribunal on the later review in July 2020 the claimant has provided evidence of the reasons why he did not engage in July 2020. He refers first to his mother being seriously ill, including hospitalisation, between 8 and 14 March 2020. There is no reason to doubt the seriousness of that illness. He refers, second, to the pandemic and to his assuming that the hearing in July 2020 would not proceed in July 2020.

15
As to the former evidence in relation to his mother and the effect on the claimant, that evidence is extremely brief and imprecise. It does not satisfy me that the impact of his mother's illness was so great as at July 2020 as to cause his failure to engage with the tribunal or the GMC. There is no detailed or independent evidence of the effect on him. His ability to say to the tribunal that he was not interested (the second occasion in which that language was used) rather than to invite an adjournment, is not explained with the support of independent evidence, whether of depression or otherwise.

16

The latter evidence, that is evidence in which he refers to the pandemic and his assumption that the hearing would not proceed, does not meet the fact that it was clearly communicated to him in writing that the hearing would proceed and would proceed remotely.

17
Mr Parkin submits that the tribunal was obliged to give careful consideration to the circumstances where a medical practitioner avers that he is unable to attend a hearing. The claimant explains, says Mr Parkin, his reasons for being unable to attend the hearing, but as I have indicated, I reject the proposition that he was unable to attend.

18
Before the hearing in July 2020, it is relevant to note a number of particular communications. On 2 June 2020 the MPTS sent an email to the claimant giving formal notice of the date of the hearing and explaining that it would take place remotely via Skype for Business. It was to this exchange that the claimant responded with a two-word email "not interested".

19
Before that, on 31 March 2020, the investigation officer confirmed that he had the correct email address for the claimant and then sent an email attaching a letter asking the claimant to provide any evidence by the 27 April 2020. There was no response from the claimant.

20
A further email on 26 May 2020 from the investigation officer to the claimant attached a letter providing details of the GMC representative for the review hearing. The covering email noted that the GMC was yet to receive any information or evidence from the claimant and stated that he could still submit information or evidence for consideration. Again, the claimant did not respond.

21
On 15 June 2020 GMC's legal department sent an email to the claimant attaching a letter requesting copies of any documents which he intended to present to the review tribunal. The claimant again did not respond.

22
The finding of the review tribunal that the claimant had been served with notice and was voluntarily absent from the review is not open to question. Its decision to proceed in his absence is not open, in my judgment, to criticism. The tribunal's conclusions that the claimant had provided no information or evidence and that he had not demonstrated any insight or remediation since the hearing before the tribunal in 2019 were fully made out. The tribunal was entitled to reach the view that there was a persistent lack of meaningful engagement with the GMC and that it would serve no purpose to impose a further period of suspension because the tribunal indicated it was not satisfied that the claimant would engage or respond positively to the mediation. The sanction of erasure was, on the materials before it, in my judgment properly open to it.

23
Indeed Mr Parkin has not, very sensibly and properly, on the hearing of this appeal, sought to criticise the tribunal, recognising that the tribunal did only what was to be expected on what was before it. He also realistically acknowledges that the claimant has not helped himself. Mr Parkin's careful focus is instead on the difference that the evidence he wishes to adduce together with the appraisal would, in his contention, make. In my judgment, that evidence is so far short of what was needed that it would have made no difference to the outcome, and that position should be recognised on this appeal.

24
Mr Parkin submitted that the tribunal would have been almost bound to form a different view, at least in respect of sanction. Very substantial improvements had been made, entirely contrary, he submits, to the conclusions reached by the tribunal.

25
With respect, I reject that argument. Even a close study of the appraisal, understandably described by Mr Parkin as the document of greatest importance amongst those available to him, does not bear out the argument. As Mr Mant submitted, for the GMC, the appraisal was conducted on 6 September 2020. Although it is stated to cover the period September 2019 to September 2020, there is no evidence of any active involvement in any appraisal process prior to the date of the review hearing. As Mr Mant also submits, in so far as any of the content of the appraisal may relate to matters pre-dating the review hearing, its relevance is extremely limited. There is, submits Mr Mant correctly, no evidence of any focused steps taken to address the specific concerns identified by the tribunals in 2019. Even if the appraisal report were to be admitted in evidence, it does not assist the claimant in establishing that the decision of the review tribunal was wrong.

26
For the material other than the assessment that falls to be considered with reference to Ladd v Marshall principles, the first two of the three limbs of the well-known test are failed. The evidence was there to be provided quite simply as had been asked. That evidence, going principally to some CPD, was nowhere near enough to have had an important influence on the result, especially given the background of non-engagement and the breadth of concern over impairment. The present case does not offer anything to make it an exception, even if Ladd v Marshall principles were not met. See Jasinerachi v GMS [2014] EWHC 3570.

27
In the result, and without hesitation and on the facts of this particular case, I am bound to refuse the application to adduce new evidence where that pre-dated the review hearing. I dismiss the appeal. I record that even if I had allowed the new evidence that I refuse, I would still have dismissed the appeal.

_____