

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Hearing : 8<sup>th</sup> July, 2002

Date of Decision : 13<sup>th</sup> August, 2002

C.W.P. NO. 2419 OF 1996

DR. ANUPAM SETHI ... .. PETITIONER  
THROUGH : MR. M. TARIQ SIDIQUE,  
ADVOCATE

- VERSUS -

THE GOVERNMENT OF NATIONAL  
CAPITAL TERRITORY OF DELHI & ORS. ... .. RESPONDENTS  
THROUGH : MS. AVNISH AHLAWAT AND  
MR. YOGESH CHAUDHARY  
ADVOCATES FOR R - 1  
MR. SUBHASH OBEROI,  
ADVOCATE FOR R - 2

C.W.P. NO. 4087 OF 1996

DR. ENSAN ALI FAROOQUEE ... .. PETITIONER  
THROUGH : MR. M. TARIQ SIDIQUE,  
ADVOCATE

- VERSUS -

GOVERNMENT OF NATIONAL  
CAPITAL TERRITORY OF DELHI & ORS. ... .. RESPONDENTS  
THROUGH : MS. AVNISH AHLAWAT AND  
MR. YOGESH CHAUDHARY  
ADVOCATES FOR R - 1  
MR. SUBHASH OBEROI,  
ADVOCATE FOR R - 2

C.W.P. NO. 4363 OF 1996

DR. M. AMIN & ORS. ... .. PETITIONERS  
THROUGH : MR. M. TARIQ SIDIQUE,  
ADVOCATE

- VERSUS -

GOVERNMENT OF NATIONAL  
CAPITAL TERRITORY OF DELHI & ORS. ... .. RESPONDENTS  
THROUGH : MS. AVNISH AHLAWAT AND  
MR. YOGESH CHAUDHARY  
ADVOCATES FOR R - 1  
MR. SUBHASH OBEROI,  
ADVOCATE FOR R - 2

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A N D

C.W.P. NO. 1559 OF 2002

DR. JATINDER SINGH ... PETITIONER  
THROUGH : MR. M. TARIQ SIDIQUEE,  
ADVOCATE

- VERSUS -

GOVERNMENT OF NATIONAL  
CAPITAL TERRITORY OF DELHI & ORS. ... RESPONDENTS  
THROUGH : MR. AMIET ANDLEY,  
ADVOCATE FOR  
RESPONDENTS - 1, 2, 7 & 8  
MR. SANJAY JAIN,  
ADVOCATE FOR R - 4/UPSC  
MR. ANURAG MATHUR,  
ADVOCATE FOR R - 5/  
UNIVERSITY OF DELHI

CORAM :

THE HON'BLE MR. JUSTICE S.B. SINHA, CHIEF JUSTICE  
THE HON'BLE MR. JUSTICE A.K. SIKRI

1. Whether reporters of local papers may  
be allowed to see the judgment?
2. To be referred to the reporter or not?

S.B. SINHA, C.J.

These writ petitions involving common questions of law and  
fact were taken up for hearing together and are being  
disposed of by this common judgment.

2. The petitioners were employed in Dr. B.R. Sur  
Homoeopathic Medical College, Hospital & Research Centre (

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in short, 'the said College' ). A sample appointment letter dated 22.03.1990 issued to Ms. Anupam Sethi reads thus :-

"Ref. No. SHMC/Sept./88/N.D/5

Date 22.3.1990

To,  
Anupam Sethi

APPOINTMENT LETTER

Dear Madam

With reference to your interview for the post of Demonstrator we take pleasure in offering you the said post on the terms and conditions mentioned herein below :

1. You will be paid Rs. 1000/- p.m. (Consolidated) as salary.
2. You will be on probation for a period of 6 months from the date of joining. The probation period may be extended or reduced at the discretion of the Management or any other officer authorised in this behalf. If you do not agree to the extension of probation period your services will be terminated by the management in which case you will have no right to claim any thing on this account. Your probation period will automatically stand extended till the confirmation orders are issued in writing by the Management or any other officer authorised in this behalf. Your services can be terminated at any time without notice and without assigning any reason during the period of probation.
3. After your confirmation the Management may terminate your services if in their opinion your continuation in the service is detrimental to the interest of the college by reasons of your misconduct, disobedience, insubordination, any act subversive of discipline, inefficiency, negligence or unsatisfactory work continued ill health or inability to perform duties or breach of any of the terms and conditions mentioned herein or of such rules as may be framed by the college from time to time."

3. The said College was established in the year 1988 and used to be run by the respondent No. 4 a society registered under the Societies Registration Act. The affiliation of the said College was withdrawn as a result whereof a decision had been taken to close down the institution w.e.f. 16.09.1996. However, the students who were already admitted were allowed to complete their courses of studies up to the year 1997. On the premise that the services of the petitioners

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are not required, the same were terminated upon service of one month's notice in terms of the offer of appointment.

4. It, however, stands accepted that subsequently the respondent No. 4 made a request to the Government to accept the properties of the said College subject to the condition that the name of the College be maintained. The said offer of the respondent No. 4 was accepted.
5. It is relevant to refer to a few clauses from the Note prepared for Council of Ministers, which read thus :-

"5. Recently, the Dr. B.R. Sur Charitable Trust has offered to hand over this institution to Govt. of Delhi as a gift with only one condition namely that the present name of the institution i.e. Dr. B.R. Sur Homeopathic Medical College & Hospital should be allowed to continue. The management has also stated that there is no financial liability towards the payment of land, ground rent, water, electricity charges etc. and there is no stay order from any court about its functioning. However, three court cases are pending in the High Court of Delhi relating to the staff of the institution.

- \* After take over the institution would be continued to be known as Dr. B.R. Sur Homeopathic Medical College and Hospital & Research Centre.

- \* OPD and 50 bedded hospital shall be revived immediately with the take over the institution. Requisite number of posts, as per approved norms, would be deemed to have been created for this purpose.

- \* The existing staff of the institution who are working on consolidated salary shall also be absorbed on contract basis and shall be given consolidated salary as per the norms of Finance Deptt., Govt. of Delhi. They may be considered for absorption only after screening by the competent authority and subject to the fulfillment of eligibility conditions for the respective posts."

The said proposal for taking over of the said institution was approved by the Council of Ministers on or about 23.09.1998.

6. The fact that the staff of the said institution were to be absorbed had also been accepted in the counter affidavit in the following terms :-

"5. It was decided that the existing staff of the institution who were working on consolidated salary would also be absorbed on contract basis and would be given consolidated salary as per the norms of the Finance Department, Government of Delhi. However, they would be considered absorption only after screening by the competent authority and subject to the fulfillment of eligibility conditions for the respective posts. Further, creation and filling up of posts for the institution would be in accordance with the norms fixed by the Central Council of Homoeopathy, Government of Delhi and the Government of India. A copy of the Cabinet decision no 365 dated 19.9.98 along with the proposal which was approved is annexed hereto as Annexure R-3."

(Emphasis supplied)

7. The order of termination dated 16.09.1996 passed in respect of the petitioner in C.W.P. No. 4087 of 1996 reads thus :-

"To

Dr. E.A. Farooquee,

You are already aware that the college has not been recognised since 1993-94, and there is no hope that it will be recognised further. We regret to inform you that your services will not be required after 15<sup>th</sup> of November, 1996. The period from today upto 15<sup>th</sup> of November is considered as notice for the termination of your service from that date.

Sd/-  
Chairman"

8. Mr. Tariq Sidiquie, the learned counsel appearing on behalf of the petitioners, would submit that the termination of services of the petitioners must be held to be illegal inasmuch as the College continued functioning upto 1997

and, thus, the reasons assigned for termination of services of the petitioner is non-est in the eyes of law.

9. According to the respondents, the only ground upon which the services of the petitioners had been terminated is the purported closure of the said College, but the same had not taken place and as such there is no reason as to why the petitioners should not be directed to be reinstated in service.

It was contended that having regard to the decision of the Apex Court in Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors. etc.<sup>1</sup>, a writ petition would be maintainable as against the respondent No. 4.

10. The learned counsel appearing on behalf of the respondents, on the other hand, would submit that these writ petitions are not maintainable.

According to the learned counsel, the relationship between the writ petitioners and the respondent No. 4 was governed by the contract of employment, which cannot be enforced by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. Reliance in this connection has been placed on Executive Committee of Vaish Degree College, Shamli & Ors. v. Lakshmi Narain & Ors.<sup>2</sup> and Smt. J. Tiwari v. Smt. Jawala Devi Vidya Mandir & Ors.<sup>3</sup>.

<sup>1</sup> JT 1993 (1) SC 474

<sup>2</sup> AIR 1976 SC 888

<sup>3</sup> AIR 1981 SC 122

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11. Apart from the writ petitions filed by the erstwhile employees of the institution, one Dr. Jatinder Singh has also filed a writ petition, which is in the nature of public interest litigation *inter alia* praying for the following reliefs :-

"(a) issue a writ of mandamus or any other writ or directions directing the Respondents :

- (i) to run the College maintaining the standard of teaching and training in accordance with the norms prescribed by Homeopathy (Minimum Standards of Education) Regulation 1983 ;
- (ii) to create at least 62 numbers of permanent teaching posts in each of the colleges i.e. Respondents No. 7 & 8 as per the Homeopathy (Minimum Standards of Education) Regulation 1983;
- (iii) to appoint teaching staff in the cadres of Professors, Assistant Professors/ Readers, Lecturers & Demonstrators/ Tutors subject wise and such teaching staff must possess the requisite recognized medical qualifications, teaching experience in the concerned subjects as laid down in the Regulations of 1983 and Circular No. 14-2/91-CCM dated 1.8.1998 issued by Respondent No. 3.
- (iv) To quash the appointment of three Assistant Professors who have been selected by Respondent No. 4 vide advertisement No. 3/2001 dated 16.2.2001 and advertisement No. 5/2001 dated 10.3.2001 in violation of norms and standards as set up by Respondent No. 3.
- (vi) Not to select/appoint/confirm teaching staff in the Cadre of Assistant Professor who do not have requisite experience in the concerned subjects as prescribed by the Respondent No. 3.
- (vii) To abolish the post of Medical Officer (Teaching), which is not in the cadres as prescribed by the Respondent No. 3.

(b) Any other order(s) as this Hon'ble Court may deem just, fit and proper in the facts and circumstances of the case."

12. Before advertng to the question(s) raised in three of these writ petitions ( C.W.P. Nos. 2419 of 1996; 4087 of 1996; and 4363 of 1996 ) we may note the status position of the petitioners.

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The essential qualification for the posts, which are required to be filled up, number of posts, etc. would appear from the following chart :-

**Dr. B.R. Sur Medical College, Hospital & Research Centre  
Nanak Pura, Moti Bagh, New Delhi — 110 021**

S.N.	Name of Post	Scale of post	Sanctioned post	Vacancy	Requirement as per Recruitment Rules	Post filled by
1	Librarian	5500-9000	1	1	<p>Essential</p> <ol style="list-style-type: none"> <li>1. Master in Library Science.</li> <li>2. Three years experience as Librarian in a Govt. Public Library, OR</li> <li>1. Graduate from a recognised university with Diploma in Library Science or Bachelor in Library Science.</li> <li>2. Five years experience as Librarian in a Govt. Public Library.</li> </ol>	Delhi Subordinate Service Selection Board
2	Laboratory Technician	4500-7000	1	1 (and 1 post has already been filled up by Delhi Subordinate Service Selection Board)	<ol style="list-style-type: none"> <li>1. Matriculate/Higher Sec. with Science.</li> <li>2. Certificate/Diploma in Laboratory Technician/Lab. Assistant/ or the course from a recognized Institution.</li> <li>3. Three years experience as a Lab. Asstt. in a specific Department.</li> </ol>	Delhi Subordinate Service Selection Board
3	Assistant Professors of different subjects	10000 - 15200 + NPA	13	13 8 posts haven already been filled up as per Recruitment Rule's of Assistant Professor. 4 posts have been advertised by UPSC for direct recruitment and Recruitment Rule's for one post of Assistant	<ol style="list-style-type: none"> <li>1. A Diploma of 4 years duration in Homeopathy or a Degree in Homeopathy from a recognized university/ institution or equivalent. OR qualification included in the 3<sup>rd</sup> Schedule of the Homeopathy Central Council Act, 1973</li> <li>2. 4 years of teaching experience as Lecturer or 7 years of teaching experience in a recognized institution.</li> </ol>	Union Public Service Commission as per Recruitment Rules.



				Professor (Radiology) is under framing.		MS
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13. The petitioners had not applied for their appointment on regular basis and even if they had done so, they have not been selected therefor.
14. The question as to whether, in the aforementioned situation, the petitioners are entitled to the reliefs sought for in these writ petitions or not must be considered from the aforementioned backdrop of events.
15. It is not in dispute that the respondent No. 4 society was a private college. It is not a 'State' within the meaning of Article 12 of the Constitution of India. It had entered into a contract of service with the petitioners. The services of the petitioners were ad hoc in nature. The action of the respondent No. 4 in terminating the services of the petitioners cannot be said to be unjustified, as a decision had been taken to close down the said College and the factum of actual closing down of the said College is neither denied nor disputed.

It is also not in dispute that the Government refused to give further recognition to the said College as a result whereof admission of students had stopped. The said College had to function up to 1997 so as to enable the students to complete their courses of studies.

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16. The submission of the learned counsel appearing for the petitioners to the effect that having regard to the decision of the Apex Court in Unni Krishnan's case ( Supra ), the respondent No. 4 would be deemed to be a 'State' and thus the writ petition would be maintainable, cannot be accepted.

A writ petition may be maintainable as against an institution imparting education rendering supplemental to sovereign functions, but the same would not mean that a writ petition would also be maintainable for enforcing a contract of service. A body may be amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India for one purpose, but such writ petition may not be maintainable for another. Furthermore, no institution had a right to be affiliated or recognized. Functions of an educational institution would fall within the purview of sovereign function of the State, so long as therein education is imparted in accordance with law.

A writ petition would *inter alia* be maintainable as against a private body, when it has a monopoly status or is a public utility concern and when it has failed / neglected to discharge its statutory duties.

A contract of service is contractual in nature. No statute operates in the field regulating functions of the respondent No. 4 for the purpose of making recruitment or laying down the conditions of service of the staff. A writ petition would be maintainable only in a case whence the conditions of service of the employees are protected by a statute and/or

when the service are terminated in violation of mandatory provisions of a statute. This aspect of the matter has been considered in Executive Committee of Vaish Degree College's case ( Supra ).

17. Yet again in Smt. Jawala Devi Vidya Mandir's case ( Supra ), the Apex Court observed :-

"4. We are unable to accept the contention strenuously advanced before us by the appellant's learned counsel that respondent 1 is a public body or a statutory authority and therefore the appellant would be entitled to obtain a declaration that she continued to be in the service of respondent 1 since the order terminating her services has been found to be unlawful. The regulations of the University or the provisions of the Education Code framed by the State Government may be applicable to respondent 1 and if the provisions thereof are violated by respondent 1, the University may be entitled to disaffiliate the institution and the Government may perhaps be entitled to withdraw the educational grant payable to the institution. That does not, however, mean that respondent 1 is a public or a statutory body. Respondent 1 is a private institution which is registered under the Societies Registration Act 1860. It was established by one Nand Lal, a retired Deputy Collector, who named it after his wife Smt. Jwala Devi. The Society was established for the purpose of managing the institution."

Following its decision in Executive Committee of Vaish Degree College's case ( Supra ), it was observed :-

"We may further assume that since this procedure was not followed by the Society, the order of terminating the appellant's service is unlawful. But the appellant's is an employer of a private institution and their mutual rights and obligations are governed by the terms of the contract, Exhibit 1, which was entered into by them in 1953. Since under those terms the appellant's service were liable to be terminated on three month's notice, all that she would be entitled to, even if the dismissal is wrongful, is a decree for damages and not an order of reinstatement or declaration that notwithstanding the termination of her services she continued to be in service."

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18. The matter has been considered by one of us ( S.B. Sinha, C.J. ) in Ram Saran Shastri v. State of West Bengal & Ors.<sup>4</sup>, wherein the Calcutta High Court considering a large number of decisions held that writ petition would not lie against the management of a school when the teacher did not receive any salary or allowances from the Government nor any amount was spent upon the petitioner from the public fund. It was held :-

"40. For the reasons aforementioned, it must be held that no writ lies as against the Managing Committee of the respondent school at the instance of the petitioner because the writ petition does not involve any public law element in between himself and the concerned respondents. In view of the fact that the statutory rules framed by the State having not been followed in the appointment of the petitioner, it cannot be said that the petitioner has derived any legal right to obtain a writ of or in the nature of *mandamus*, as has been sought for. The submission of Mr. Sanyal to the effect that the petitioner has a legitimate expectation that his service would be approved in terms of the Rules framed by the State, cannot also be accepted. Only because in the appointment letter allegedly it was stated that the petitioner would be entitled to the Government D.A., the same does not mean that a promise was made by the school authorities that he would be a Government servant. In any case, the State is not bound by the purported promise. It is now well known that no relief can be granted only on the basis of legitimate expectation for obtaining a *writ of Mandamus*. There must exist a legal right in the petitioner and a corresponding legal duty cast on the respondent. Such a legal right being not present in the case of the petitioner, a writ cannot be issued only upon invoking the doctrine of legitimate expectation."

The Court also negated the contention of applicability of the doctrine of legitimate expectation and promissory estoppel noticing :-

"In *Syed Iqbal Ali Imam Raza vs. State of Bihar & Anr.*, reported in AIR 1994 Patna 167, a bench of five judges stated—

<sup>4</sup> 1995 (1) CHN 419

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"26. In *Francis vs. Municipal Councillors of Kuala Lumpur* (1962) 3 All ER 633 Lord Morris held :—

"When there has been a purported termination of contract of service, a declaration to the effect that the contract of service still subsisted will rarely be made. This is a consequence of the general principle of law that the Courts will not grant specific performance of contracts of service. Special circumstances will be required before such a declaration is made and its making will normally be in the discretion of the Court."

It was further noticed :-

"47. In *Wade & Forsyth's Administrative Law* 1994 Edn. at page 1018 it is stated :—

In *R vs. Crown Prosecution Service ex. p. Hogg* (1994) The Times, 24<sup>th</sup> April, the Court of Appeal upheld the refusal of leave to move for judicial review sought by a prosecutor in the Crown Prosecution Service who had been dismissed during the probationary period. The relationship between the Crown as employer and a Crown Servence as employees was a private law relationship as held in *Mecloren vs. Home Officer* (199) ICR 824 and in this case it lacked the statutory underpinning discussed in *R. v. East Barkshire Health Authority ex. p. Welsh* (1985) Q.B., 152."

19. The learned counsel appearing for the petitioner has relied upon the observations made in paragraph 225 of Unni Krishnan's case ( Supra ), wherein the Apex Court relied upon its earlier decision in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust & Ors. v. V.R. Rudani & Ors.<sup>5</sup>. The said decision has also been considered in Ram Saran Shastry's case ( Supra ). A bare perusal of the said decision would clearly show that it has categorically been held therein that

<sup>5</sup> JT 1989 Supp. SC 129 = 1989 (2) SCC 691

a prerogative writ of mandamus must be confined only to public authorities to compel performance of public duty. It was observed :-

"The 'public authority' for the means every body which is created by statute—and whose powers and duties are defined by statute. So Government departments, local authorities, police authorities and statutory undertakings and corporations, are all 'public authorities'. But there is no such limitation for our High Courts to issue the writ 'in the nature of *mandamus*'. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English Law. Under Article 226, writs can be issued to 'any person or authority'. It can be issued "for the enforcement of any of the fundamental rights and for any other purpose.""

The said decision, therefore, cannot be said to have any application in the instant case.

For the reasons aforementioned, no relief can be granted to the petitioners.

20. So far as public interest litigation is concerned, we are of the opinion that the preliminary objections raised by the respondents are valid. The extracts of the said preliminary objections are as under :-

- (1) That the petitioner has no *locus standi* to file the present petition, as he is not the aggrieved party. He is neither the candidate of the Union Public Service Commission ( in short, 'UPSC' ) selection process or employee of the institutions concerned. Moreover, he has not made any representation to the Govt. before approaching this Court.
- (2) That Nehru Homoeopathic Medical College was established in 1967 and was handed over to Delhi Administration in September, 1972, whereas Dr.

B.R. Sur Homoeopathic Medical College, Hospital & Research Centre was established in September, 1988 and was donated to Govt. of NCT of Delhi in October, 1998.


- (3) The Nehru Homoeopathic Medical College is affiliated to University of Delhi and Dr. B.R. Sur Homoeopathic Medical College, Hospital & Research Centre is affiliated to Guru Govind Singh Indraprastha University. The basic guiding principle is to ensure good teaching to the degree level student of Homoeopathy and to provide adequate facilities, pay scales and promotional avenues to the staff without compromising the qualifications and experience required for each post.
- (4) That the recruitment rules of a particular post are made in consultation and concurrence of UPSC after taking into consideration the analogous posts in Govt. of India, Govt. of Delhi and in accordance with the norms fixed by the Central Council of Homoeopathy. The said recruitment rules are statutory in nature and the Govt. cannot deviate from the provisions prescribed therein.
- (5) The once the recruitment rules of a particular post are notified, the process of filling up of post begins by sending requisition to the UPSC, which authority recommends the selected candidate to Group 'A' post and the candidates are selected on all-India basis after conducting written examination or interview or both as per the decision of UPSC and UPSC recommends the name of the candidate for filling up of the particular post.
- (6) That a Homoeopathic Advisory Committee proposed amendments of the CCH regulation, Central Health Services cadre of allopathic

Doctors, Pay commission report, set up of Homoeopathic in Govt. of Delhi & other States, etc. The Committee recommended for cadre restructuring of the teaching staff working under Govt. of Delhi to remove the anomalies and bottlenecks in the colleges of modern system of Medicine.

Having regard to the nature of the relief prayed for in the said petition, we have no doubt in our mind that the same was not filed bona fide.

It appears that the Government of Delhi had already created 71 temporary posts of various groups under planning scheme. As regard the allegation of irregular appointment and appointment on pick and chose method is concerned, the same are categorically denied and disputed by respondent Nos. 1, 2, 7 and 8 in the counter affidavit. We are, however, of the opinion that the irregularities in the matter of appointment, if any, may be looked into by the respondents herein.

These writ petitions are disposed of accordingly without ~~an~~ being any order as to costs.

  
CHIEF JUSTICE

  
A.K. SIKRI, J.

August 13<sup>th</sup>, 2002  
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