

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 3rd October, 2012

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W.P.(C) No.2604/2012

MITRAON UTHAN SAMITI (REGD.)

..... Petitioner

Through: Mr. M.B. Singh, Adv.

Versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Zubeda Begum & Ms. Sana
Ansari, Advs. for GNCTD.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This writ petition, filed in public interest, i) impugns the orders dated 23.09.2011 and 22.02.2012 of the respondent No.1 Government of NCT of Delhi (GNCTD) of appointment of the respondent No.5 Dr. B.S. Banerjee as the Project Director of the respondent No.2 Chaudhary Brahm Prakash Ayurved Charak Sansthan (CBPACS), beyond the prescribed maximum age of 62 years; ii) seeks to restrain the respondent No.1 GNCTD from extending any further, appointment of Dr. B.S. Banerjee as Project Director and to instead appoint a regular Project Director of CBPACS; iii) seeks to prohibit other appointments in CBPACS; and, iv) seeks a direction for

recovery with interest of the amounts illegally paid to the said Dr. B.S. Banerjee.

2. On the plea of the petitioner that inspite of the said Dr. B.S. Banerjee attaining the prescribed age of 62 years, his tenure was being extended from time to time and no steps were being taken for appointment of a Director on regular basis, notice of the petition was issued.

3. It is the case in the writ petition:

- (i) that CBPACS has been established as per the decision dated 30.03.2006 of the Council of Ministers of GNCTD and was registered as an autonomous body under the Societies Registration Act, 1860, though is an enterprise of GNCTD;
- (ii) that as per the Articles of Association of CBPACS, the appointment of a Director is to be for a period of five years, extendable from time to time subject to retirement at the age of 62 years;
- (iii) that Dr. B.S. Banerjee was initially appointed to the post of Project Director on contract basis for two years with effect from 01.09.2009, till he attains the age of 62 years and to

function under the control of the Principal Secretary (Health & Family Welfare);

- (iv) that Dr. B.S. Banerjee is a retired Indian Administrative Service (IAS) Officer and attained the age of 62 years on 31.08.2011; however vide order dated 23.09.2011, he was granted further extension as Project Director for six months with effect from 13.08.2011 or till the appointment of a regular Project Director whichever is earlier;
- (v) that no effort is being made to appoint a regular Director and the contract of Dr. B.S. Banerjee was renewed with effect from 13.02.2012 to 12.05.2012 or till the appointment of a regular Director whichever is earlier;
- (vi) that though the Director is to be from amongst the Ayurveda professionals having 20 years standing experience in the profession out of which minimum 4 years experience should be in Administration, Dr. B.S. Banerjee has neither any knowledge nor any experience in the subject of Ayurved;

- (vii) that Dr. B.S. Banerjee has been illegally paid ₹8,00,000/- more than what is permissible for a retired government servant;
- (viii) that the requisite approvals for payments to Dr. B.S. Banerjee has not been obtained from the Finance Department; and,
- (ix) that the said Dr. B.S. Banerjee while himself illegally occupying the post of Director, is making large scale appointments in haste; instances of appointments made without following the prescribed procedure have been given.

4. GNCTD and CBPACS in their joint counter affidavit have stated:

- (A) that CBPACS is a newly set up Society and at the outset required lot of inputs for coordination with various civic agencies and different service providers to put the required infrastructure in place;
- (B) that keeping in mind the supervisory skills required during the gestation period, contractual / temporary appointments

were resorted to for engagement of staff with the requisite background and experience;

- (C) that though the sanctioned strength for various posts in the CBPACS is 415, only 91 persons have been engaged so as to provide quality service to the patients visiting CBPACS;
- (D) that Dr. B.S. Banerjee, an IAS Officer was serving as Director, Indian System of Medicine and Homeopathy, GNCTD and was in the year 2009 also holding additional charge as Additional Secretary, Health and Family Welfare, GNCTD and as Project Director of CBPACS; he superannuated on 31.08.2009 on attaining the age of 60 years;
- (E) that however considering the work carried out by Dr. B.S. Banerjee as Project Director of CBPACS, he was vide order dated 01.09.2009 re-appointed as the Project Director of CBPACS for a period of two years on contract basis;
- (F) that during the tenure of Dr. B.S. Banerjee, the Hospital of CBPACS started functioning in December, 2009 and the

Medical College of CBPACS started functioning in November, 2010 for Under Graduate Courses and 86 of the 100 seats were filled in the academic session 2011-12;

- (G) that Dr. B.S. Banerjee as Project Director was thus able to achieve good results for CBPACS and after expiry of two years from 01.09.2009, his contract was extended for six months, as part of the construction viz. Sewage Treatment Plant (STP), installation of Central Air Conditioners, installation and functioning of all Lifts, completion of Medical Gas Pipeline, making of major Operation Theaters functional, getting regular electricity connection, getting various clearances etc., was still going on;
- (H) that the present petition is *mala fide* and motivated as the petitioners are also running Ayurvedic Dispensary and are in competition with the services being provided by CBPACS;
- (I) that the College of CBPACS has completed its professional undergraduate course and the second professional course was to start in June, 2012 and there was a necessity to have a

minimum staff of faculty members before respondent No.4 Central Council of Indian Medicine visited for inspection to accord approval for second professional course;

- (J) that to fulfill all codal formalities, 14 posts were filled on contract / temporary basis; it is denied that Dr. B.S. Banerjee as Project Director has any role in the appointments made in CBPACS; it is stated that the Selection Committee for the teaching posts comprised of Dean of the Maulana Azad Medical College, Advisor (Ayurved) of the Government of India, Ex-Advisor (Ayurved) of the Government of India, President, All India Ayurved Congress and two Subject Experts in the respective field;
- (K) that as the Recruitment Rules are yet to be notified, no posts have been filled on regular basis or through Delhi Subordinate Services Selection Board (DSSSB) or Union Public Service Commission (UPSC) which is required only for appointments on regular basis and not for contractual / temporary appointments;

- (L) that the appointment of Dr. B.S. Banerjee as a Project Director was as an interim measure and he has been paid in accordance with the Rules; and
- (M) that the process of framing of Recruitment Rules for the post of Director of CBPACS is underway and is pending approval of the Services Department; and
- (N) that the temporary / contractual appointments till now are of eligible persons.

5. The petitioner has filed a rejoinder to the aforesaid counter affidavit.

6. The counsel for the petitioner has during the course of hearing handed over notices published by the Project Director of CBPACS for filling up of various posts in CBPACS and on the basis thereof has pointed out that Dr. B.S. Banerjee though appointed as Project Director is performing the role of the Director of CBPACS.

7. Per contra, the counsel for the respondents No.1 to 3 has argued that Dr. B.S. Banerjee was appointed and continued as Project Director,

as distinct from Director, for completing the project of setting up of CBPACS and the rule of maximum age of 62 years prescribed for Director thus does not apply to him. On enquiry, though not pleaded in the counter affidavit, on instructions it is stated that the Medical Superintendent of Hospital of CBPACS is performing the duties of Director and the said duties are not being performed by Dr. B.S. Banerjee who is merely the Project Director. As to the construction / infrastructure works pending as of today, it is stated that the work of installation and operation of the elevators still remains to be completed. It is further assured that immediately on the Recruitment Rules for the post of Director being framed; regular Director of CBPACS shall be appointed.

8. We have considered the matter. The Articles of Association of CBPACS describe the Director as the Chief Executive Officer of CBPACS, responsible for proper administration of affairs and funds of CBPACS and to function under the guidance of the Governing Council of CBPACS. We find it strange that inspite of Hospital of CBPACS having commenced operations nearly three years back in December, 2009 and the college of respondent no.2 having also made admissions in the academic year 2011-12, the post of Director has not been filled up as yet.

We are not satisfied with the reason given for not filling up the said post and for leaving the CBPACS headless; there is no explanation as to why in the last more than five years since when CBPACS was formed, Recruitment Rules for the post of Director and for other posts could not be framed.

9. Though it is argued that the Project Director, to which post Dr. B.S. Banerjee has been appointed, is distinct from the post of Director but we may mention that Articles of Association of CBPACS while providing for the composition of the Governing Council of CBPACS, describe the 'Project Director / Director' as the Member Secretary / Ex-Officio member of the said Governing Council. The Articles of Association elsewhere also do not make any distinction between the Director and the Project Director. Further, as per the said Articles of Association, the Director CBPACS is to exercise supervision and disciplinary control over the staff and officers of CBPACS and is to prescribe their duties and functions; all officers and staff of CBPACS are also under the administrative control of the Director. This coupled with the notices published inviting applications for filling up the posts in CBPACS in the name of the Project Director, make us suspect the role of the Project

Director as only for completing the project of the infrastructure of the Hospital and College of CBPACS and to doubt the statement of the counsel for the respondents No.1 to 3 that Dr. B.S. Banerjee as the Project Director is not performing the functions of the Director.

10. It is not in dispute that Dr. B.S. Banerjee, having attained the age of 62 years as far back as on 31.08.2011, is not competent to occupy the Office of the Director of CBPACS. The CBPACS cannot be allowed to suffer for the lethargy in appointment of its Director, when as aforesaid it is fully functional.

11. We in the circumstances, dispose of this petition by directing the respondents No.1 to 3 to as soon as possible and latest within three months of today, frame the Recruitment Rules for all the posts in CBPACS and in any case for the post of Director and appoint a Director in terms thereof and in accordance with law. Though it has already been stated that Dr. B.S. Banerjee has not been and is not performing the functions of the Director of CBPACS and by which statement we bind the respondents, we further direct that continuance of Dr. B.S. Banerjee after the expiry of three months shall be strictly for completing the project if

any remaining. As far as the claim in the petition for recovery of excess payments made to Dr. B.S. Banerjee is concerned, we direct the respondents No.1 to 3 to treat this petition as a representation of the petitioner and to within six months herefrom pass a reasoned order thereon. We grant liberty to the petitioner to within one month of today, make further representation if needed in this regard. A copy of the reasoned order disposing of the said representation be furnished to the petitioner within six months herefrom.

With the aforesaid directions, the petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

OCTOBER 03, 2012

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