

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) No. 5576/2011
% **31st July, 2013**

SURJEET SINGH SAINI & ORS. Petitioners
Through: Petitioner no.2 in person.

VERSUS

GURU TEG BAHADUR INSTITUTE OF TECHNOLOGY AND ORS.
..... Respondents
Through: Mr.C.B.N.Babu, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Petitioners are non teaching staff of the respondent no.1-College/Guru Teg Bahadur Institute of Technology. Respondent no.1-college is affiliated to respondent no.2-Guru Gobind Singh Indraprastha University. As per the terms of affiliation, the respondent no.1-Institute has to comply with the provisions of the Act, statutes, the ordinances, the regulations and the orders, directions and instructions of the University-respondent no.2. This is contained in Regulation 3(v) of the notification dated 16.2.2000 pursuant to which affiliation is granted by the respondent no.2 to the respondent no.1. This regulation reads as under:-

“3(v) An affiliated colleges or an institution shall execute a bond as laid down in the ordinance guaranteeing that it shall follow the provisions of the Act, the statutes, the ordinances, the regulations and the orders, directions and instructions of the University.”

2. Pursuant to this regulation, the Director of respondent no.1 Dr. Rinku Sharma gave an undertaking accordingly to the respondent no.2 which is filed at page 157 of the paper book. This undertaking reads as under:-

“I, Dr. Rinku Sharma, Director, Guru Tegh Bahadur Institute of Technology, Rajouri Garden, New Delhi-110064 hereby undertake to comply with all the conditions indicated by the University at the time of grant/continuation of provisional affiliation, Statutory Body while according approval and State Government while issuing No Objection Certificate for the academic session 2010-2011 along with other conditions imposed from time to time throughout the year by them.

I, Dr. Rinku Sharma, Director, Guru Tegh Bahadur Institute of Technology, Rajouri Garden, New Delhi-110064 also hereby undertake to abide by the Policy Guidelines of Govt. of NCT, Delhi/GOSIP University for academic session 2010-2011.”

3. Another undertaking was given by the Chairman of the respondent no.1 at the time of affiliation and which reads as under;-

“UNDERTAKING

The Delhi Sikh Gurudwara Management Committee, New Delhi undertakes that it shall abide by the condition of affiliation and all other provisions of the Indraprastha Vishwavidyalaya Act the Statutes and the Ordinances and

comply with the orders and instructions issued by the University from time to time including those relating to building and infrastructure facilities.”

4. In response to an RTI query as to whether the respondent no.2-University has implemented the 6th Pay Commission Report for the non-teaching staff, it was replied that the respondent no.2-University has in fact implemented the 6th Pay Commission Report and is making payment to the non-teaching staff of all the emoluments in terms of the 6th Pay Commission Report. The relevant portion of RTI query reads as under:-

Please inform me whether the recommendation of 6 th Pay Commission (Central) for revision of pay w.e.f. 1.1.2006 have been implemented for non-teaching staff in IP University?	Yes
If yes, please provide me the date of implementation.	The Finance Committee in its 22 nd meeting held on 24.9.2008 was apprised of the Govt. of Delhi's notification for implementation of Sixth Pay Central Civil Services recommendations being implemented in the University vide Agenda Item No.22.13

5. Therefore, it is clear that petitioners are bound to be paid emoluments in terms of the 6th Pay Commission Report and as adopted by the respondent no.2-University in its 22nd meeting dated 24.9.2008.

6. Counsel for respondent no.1 in defence to the reliefs claimed contended before me firstly that the decision of implementation of 6th Pay Commission Report with respect to non-teaching staff is best left to the management of the respondent no.1 inasmuch as respondent no.1 is a minority unaided institution. This argument is misconceived because the issue is not whether the respondent no.1 is a minority unaided institution but whether at the time of seeking and getting affiliation from the respondent no.2, it was agreed that the respondent no.1 will follow the necessary statutes and directions of the respondent no.2-University.

7. Another argument urged on behalf of the respondent no.1 was that one of the petitioners Sh. Surjeet Singh Saini had entered into a settlement agreement dated 13.5.2011 with the respondent No.1 and therefore he cannot be granted the benefit. This argument is also misconceived because in fact the Memorandum of Settlement dated 13.5.2011 contains a clause for payment to Sh. Surjeet Singh Saini-petitioner no.1 of entitlement of 6th Pay Commission when the same will be paid to

other employees. Para 6(C) of the Settlement Agreement dated 13.5.2011 reads as under:-

“6(C) The Petitioner shall be entitled to the Sixth Pay Commission along with the rest of the employees of the Respondent no.1 as and when the same shall be implemented as per the Rules.”

8. Finally, it is argued by respondent no.1 that respondent no.1 is not an instrumentality of State and therefore, the writ petition does not lie. This argument is also misconceived because Supreme Court has now held in many judgments starting from the judgment in the case of *Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. Vs. V.R. Rudani & Ors. 1989 (2) SCC 691* that education is a public function and therefore even a private body like a college performs a public function, a writ petition against the private college will be maintainable. No doubt remains that education is a public function and a writ will lie against a private college after the Constitution Bench Judgment of the Supreme Court in the case of *Unnikrishnan Vs. State of A.P., J.P. & Ors. etc. etc. 1993(1) SCC 645*. This argument of the respondent no.1 is also rejected.

9. The writ petition is therefore allowed and it is directed that respondent no.1 will pay the petitioners emoluments in terms of the 6th Pay

Commission Report from the date the same were granted by the respondent no.2-University with respect to its non-teaching staff. The payment to the petitioners including arrears be made by the respondent no.1 within a period of three months from today alongwith interest at 6% per annum simple from the date from which amounts became payable to the date on which the amounts are paid. If the amounts are paid after three months, petitioner will be entitled to interest at 9% per annum simple. Parties are left to bear their own costs.

JULY 31, 2013
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VALMIKI J. MEHTA, J.