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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 13051/2009, CM Nos. 14016/2009 & 17010/2012

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17th July, 2013

ANIL DUTTA MISHRA

.....Petitioner

Through: Purushottam Sharma Tripathi, Adv. Mr.
Ravi Chandra Prakash, Adv. and Ms. Nidhi
Ram, Adv.

VERSUS

GANDHI SMARAK SANGRAHALAYA SAMITI & ORS. Respondents

Through: Mr. A.K.Singla, Sr. Adv. with Mr. Deepak
R. Dahiya, Adv. for R-1,2 & 4.

Mr. Ravinder Agarwal, Adv. for R-3 (UOI)

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by the petitioner Dr. Anil Dutta Mishra impugning his dismissal from services by the respondent no.1-Gandhi Smarak Sangrahalaya Samiti/employer.

2. Respondent no.3 is Union of India. Union of India has filed an affidavit stating that except for giving a one-time grant of Rs.10 crores to the respondent no.2, which is managed by respondent No.1, the Union of India is not in the

management and control of the respondent no.2. Similar is the stand of the respondent nos. 1,2 and 4 who have filed a common counter-affidavit. Respondent no.1 is the employer.

3. The law with respect to entertaining of writ petitions is now well settled. Ordinarily a writ petition lies against the Union of India or the State Government or a body which is a 'State' or 'instrumentality of State' as per Article 12 of the Constitution of India. Of course, in limited number of cases even against a private body writ petition will lie, but these writ petitions are those wherein issue arises of compliance of certain welfare legislations or equally important legislative provisions by the private body. Against a private body as such when the private body is not doing what are known as public functions or statutory functions or such other important functions which would make it a State, a writ petition will not lie.

4. The facts of the present case show that there is only a one time grant by the Union of India. The Union of India gives grants (not one time but even on many occasions) to various organizations. Merely by giving of grants, the receiving organization does not necessarily become a State as per Article 12 of the Constitution of India. For example, various NGOs are given grants, but, that itself does not make an NGO a State under Article 12 of the Constitution of India. Merely because, and it is so argued by counsel for the petitioner, the funds given

to the respondent no.2 are audited by the Controller and Auditor General, will not grant respondent no.1 the status of a State as per Article 12 of the Constitution of India because a person or entity which grants funds is surely entitled to check utilization of the same, and mere checking of utilization cannot mean that the body in question on that ground itself will become a State as per Article 12 of the Constitution of India.

5. In the present case, the petitioner seeks enforcement of personal contractual rights as an employee. These personal contractual rights are a challenge to his compulsory retirement by the respondent no.1. No welfare legislations or any important statutory provisions are said to be violated by the respondent no.1, and of which enforcement is sought by the petitioner. Rules of respondent no.1 for its employees are not statutory rules and hence would thus be in the nature of contractual rules. Therefore, the enforcement of rights by the petitioner are purely private rights against a private body/respondent no.1 and no statutory rules are being enforced. I need not cite the entire catena of case law on the legal aspects which I have stated above and it would suffice to refer to three judgments of the Supreme Court in the cases of *Binny Ltd. & Anr. Vs. V. Sadasivan & Ors. 2005 (6) SCC 657, Federal Bank Ltd. Vs. Sagar Thomas & Ors. 2003 (10) SCC 733 and General Manager, Kisan Sahkari Chini Mills Ltd, Sultanpur, U.P Vs.*

Satrughan Nishad & Ors. 2003 (8) SCC 639. These judgments hold that no doubt there is no bar in entertaining a writ against a body which is not 'State' or 'instrumentality of State', but, the function or duty which that body exercises and is challenged in a petition under Article 226 has to be a public duty/ function or have a public law element or is a statutory duty and issues with employees are not public functions for entertaining a writ petition with respect thereto. There is no public law/function element in a contractual appointment matter.

6. In view of the above, the writ petition is not maintainable under Article 226 of the Constitution of India against the respondent no.1, and which is accordingly dismissed, leaving the parties to bear their own costs.

July 17, 2013
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VALMIKI J. MEHTA, J.