

\$~

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

+ W.P.(C) 2520/2013

DR. K.P.S. MALIK

Through

..... Petitioner

Mr. Manoj Singh with Mr. Sahib
Rajput, Advocates

versus

UNION OF INDIA AND ORS Respondents

Through

Mr. Amrit Pal Singh, CGSC for R-1.
Dr. Punita K. Sodhi, R-7 in person.

%

Date of Decision : 17th April, 2014**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****J U D G M E N T****MANMOHAN, J: (Oral)****CM APPL. 87/2014 in W.P.(C) 2520/2013**

Keeping in view the averments in the application, delay in filing the amended memo of parties is condoned and memo of parties is taken on record.

Accordingly, the application stands allowed.

W.P.(C) 2520/2013 & CM APPL. 89/2014

1. Present writ petition has been filed with the following prayers:-

“a) issue rule nisi;

- b) *Upon return of notice and after calling upon the parties, issue a writ of certiorari or any other appropriate writ(s), direction(s) and/or order(s) for quashing of the Office Memorandum No. C 18011/10/2010-CHS-III (Vol. I) dated 12.07.2012. (ANNEXURE P-7).*
- c) *Issue a writ of mandamus or any other appropriate writ(s), direction(s) or order(s) to directing the respondent no. 1 for the re-examination of the allegation of petitioner Prof (Dr.) K.P.S. Malik) on fraud and fictitious publication by Dr. Punita K. Sodhi by an independent body such as UGC/ICMR or in the alternative reconstitution of a Committee of External Experts to re-examine the allegations the allegation of petitioner (Dr. K.P.S. Malik) on fraud and fictitious publication by Dr. Punita K. Sodhi the allegation of petitioner (Dr. K.P.S. Malik) afresh;*
- d) *Issue a writ of mandamus or any other appropriate writ(s), direction(s) or order(s) to directing the respondent no. 2 CSIR to provide the guidelines issued to Dr. Punita K. Sodhi for conducting research work including publication as SRA of Dr. Punita K. Sodhi during her tenure assignment in the Department of Ophthalmology, SJH, New Delhi under the petitioner Prof (Dr.) K.P.S. Malik as the HOD, SJH, New Delhi.*
- e) *Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

2. On 6th January, 2014, this Court had passed the following order:-

*"List the matter on 19th March, 2014, for final disposal.
Both parties are directed to file their short written submissions not exceeding two pages each."*

3. On 19th March, 2014, this Court had passed the following order:-

"It is stated at the bar that there has been a bereavement in the family of learned counsel for petitioner."

Dr. Punita K. Sodhi, respondent no. 7 who appears in person has been heard in part.

List present case for disposal on 17th April, 2014.

It is made clear that no adjournment would be granted on the next date of hearing.”

4. Today again a request for adjournment is made by Mr. Manoj Singh, learned counsel appearing for petitioner on the ground that he has recently been engaged. He also states that he has filed an application for adjournment. However, no fresh application is on record. In any event, this Court on the last date of hearing had made it clear that no further adjournment would be granted. Keeping in view the pre-emptory order passed by this Court, request for adjournment is declined.

5. Since there is no assistance from learned counsel for petitioner, this Court has perused the papers with the assistance of learned counsel for respondent-UOI and respondent no. 7 who is personally present.

6. Facts of the present case are that petitioner, an Ex-Additional D.G. and Ex-Head of Department of Ophthalmology, Safdarjung Hospital, New Delhi filed a complaint dated 29th August, 2007 against respondent no. 7, the then Assistant Professor of Ophthalmology, Safdarjung Hospital, New Delhi. The allegation in the complaint was that respondent no. 7 had published a fraudulent and fictitious paper.

7. At the instance of Ministry of Health & Family Welfare (for short ‘Ministry’), Lady Hardinge Medical College was directed to hold an enquiry. In pursuance thereto, a Committee of External Experts (for short “Committee”) was constituted to look into the said allegations. The Committee submitted its report to the Ministry vide letter dated 18th August, 2008.

8. Respondent no. 7 challenged the constitution of the Committee and its report by way of a petition being W.P.(C) 12708/2009. This Court vide its judgment dated 9th September, 2010 quashed the Committee's report.

9. In Appeals being LPA Nos. 721/2010 and 722/2010, a Division Bench directed the Ministry to constitute a fresh Committee to enquire into the allegations of fraud and fictitious publication levelled by the petitioner against respondent no. 7.

10. In pursuance to the said order, a Technical Committee of External Experts (hereinafter referred to as "EEC") was constituted vide Ministry's communication dated 3rd November, 2010 to look into the allegation of petitioner-Dr. K.P.S. Malik against respondent no. 7 with regard to fraud and fictitious publication.

11. Thereafter, respondent no. 7 once again challenged the enquiry proceedings by filing O.A. No. 3804/2010 before Central Administrative Tribunal (CAT), Principal Bench, New Delhi.

12. CAT vide order dated 21st December, 2010 stayed the enquiry before EEC. However, upon clarificatory applications being filed in LPA's Nos. 721-722/2010, the Division Bench clarified that two committees would have to be constituted for 'simon-pure reason' that one has to be in accord with decision rendered by the Supreme Court in **Vishakha** case and another has to examine the allegation levelled by petitioner-Dr. K.P.S. Malik against respondent no. 7.

13. Vide Office Memorandum dated 19th September, 2011, the Ministry constituted EEC to look into the allegations levelled by petitioner-Dr. K.P.S. Malik.

14. On 29th February, 2012, EEC filed its report with the Ministry. However, as after examination of the report it was found that the EEC had not examined some of the issues raised by petitioner-Dr. K.P.S. Malik, EEC was directed to re-examine the allegations. Accordingly, EEC re-examined the allegations and submitted its fresh report to the Ministry on 13th June, 2012. The relevant portion of the said report is reproduced hereinbelow:-

“Opinion of the Committee:

1. *Based on a medline search of the publications (Annexure 8) and clarifications provided it appears that the publications and work were apparently not authorized by the head of the department as per the copy of memo submitted by Dr. K P S Malik but cannot be said to be fraudulent and fictitious based on the documents provided or searched.*
2. *Regarding the allegation of fraudulent (meaning fake, false, sham, falsified, counterfeit, deceitful, deceptive, imitation) and fictitious (meaning fabricated, untrue, invented, conjured, made up, pretended) the experts were not provided with any documentary evidence for the same.*
3. *Some of the studies mentioned above were not relating to the designated research project (Dacrocystorphinostomy). Any papers published outside the scope of the approved project were beyond the assigned job responsibilities of the officer as per the opinion of the responsible HOD.*
4. *The allegation of designation of various authors as chair/ chairperson mentioned in some papers was clarified and communicated to the publishers for rectification. Some other papers mentioned only affiliation and no designations. The committee feels that this was erroneously done by publishers and the allegation may be dropped.*
5. *Keeping in view the DMC report and High Court Order and the terms of reference of External Experts Committee, the committee feels that they cannot give any further opinion on this matter.”*

15. The Ministry upon a perusal of the report, closed the matter and findings of the EEC were communicated to petitioner-Dr. K.P.S. Malik and respondent no. 7.

16. However, petitioner-Dr. K.P.S. Malik requested the Ministry to reopen the case.

17. Upon consideration of the request, Ministry vide letter dated 17th August, 2012 declined the same.

18. Aggrieved by the aforesaid order, the petitioner filed the present writ petition.

19. In the present writ petition, petitioner has primarily taken two grounds, namely, that petitioner-Dr. K.P.S. Malik was not sent any intimation to participate in the inquiry and further one of the members of the EEC was absent in the second inquiry committee meeting.

20. A perusal of the paper book reveals that EEC had called both petitioner-Dr. K.P.S. Malik and respondent no. 7 to attend the hearing and both of them had not only participated in the hearing but had also given their comments/pleadings and documents. The relevant portion of the noting from the Administrative file placed on record is reproduced hereinbelow:-

“Notes from pre-page explain the case. Earlier, Secretary (H & FW) has seen this matter on pp 72-73/N. As per the direction of Secretary, (H & FW), this time External Expert Committee (EEC) called both Dr. Punita Sodhi and Dr. KPS Malik to attend the hearing and both of them participated in the meeting and gave their comments, clarifications and supportive documents. The report submitted by EEC may kindly be perused at F/Z)pp 428431/ar.).

The opinion of the Committee is at page 431/ear. The Committee has, inter alia, concluded that “the Committee feels that this (publishing herself as Chairman of Department of Ophthalmology, SJH) was erroneously done by the publishers and the allegations may be dropped.

It has been observed that on

Reference notes from pre-page.

Dr. KPS Malik should have made his oral/written submission before the External Expert Committee when meeting of committee were going on and he had attended the meetings. It may not be desirable to re-open the case again. Submitted for consideration/approval."

(emphasis supplied)

21. A perusal of the impugned report also reveals that Dr. Amod Gupta had sent his comments by e-mail which were considered by the EEC. In fact, the report of the EEC was a unanimous one.

22. Consequently, the grounds raised by the petitioner in the present petition are baseless. This Court is also of the opinion that the EEC rightly concluded that the publication and the work in question were apparently not authorised by the Head of the Department, but were not fraudulent and fictitious.

23. This Court is of the view that the aforesaid factual conclusion of a committee of experts cannot be interfered with in writ jurisdiction, especially when no allegation of bias has been made against the members. This Court is further of the opinion that by no stretch of imagination can the findings of the expert committee in the present case be regarded as perverse.

24. Consequently, present writ petition being bereft of merits is dismissed. The application stands disposed of.

MANMOHAN, J

APRIL 17, 2014

rn