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

Judgment reserved on July 29, 2015
Judgment delivered on August 12, 2015

\+ **W.P.(C) 3657/2014**

NIRAJ CHANDRA ..... Petitioner

Through: Mr.Sanjeev Anand, Advocate with Ms.Kajal Chandra & Mr.Arush Khanna, Advocates

versus

DAV COLLEGE MANAGING COMMITTEE AND ORS.. Respondent

Through: Mr.Rajshekhar Rao, Advocate with Ms.Gauri Puri, Adv. for R-1 & R-2
Mr.Vineet Malik, Adv. for R-3

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. In this petition the petitioner has, *inter-alia,* prayed for the following substantive reliefs:-

> *"(a) issue an appropriate writ, order or direction and declare that the Resolutions no. 10 dated 14th November, 2010 and 55 dated 9th January, 2011 of the respondent no.l to the extent they only implement the Sixth Pay Commission and revise on that basis the pay scales of the regular staff of the respondent no.1 and not of the petitioner and other contractual employees, is discriminatory, illegal and arbitrary and declare that the respondent no.l cannot discriminate the petitioner and other contractual employees in this regard and is obliged to implement the said resolutions also with respect to the petitioner and all other contractual employees as well.*
>
> *(b) issue a writ of mandamus and direct respondents no.l & 2 to implement the Sixth Pay Commission recommendations with respect to the petitioner as they have done in the case of its regular staff in terms of its Resolutions no. 10 dated 14th*

November, 2010 and 55 dated 9th January, 2011 with effect from 1st January, 2006 and pay the revised salary to the petitioner with all arrears with interest @ 18% per annum from the date the said entitlement of the petitioner arose in terms of the said recommendations and the said resolutions within the time fixed by this Hon'ble Court and direct the respondent no.2 to ensure its compliance by the respondent no.1.

(c) Award costs of the present petition to the petitioner and against the respondent."

Facts:

2. It is the case of the petitioner that he was appointed as a Professor by respondent Nos.1 & 2 in the respondent No.2 institute at Faridabad on adhoc and contractual basis for a period of three years with effect from May 01, 2004 and his appointment was to be governed by the Rules and Regulations of the said institute i.e. respondent No.2 and the University i.e. respondent No.3. On May 01, 2007, the petitioner was again appointed on the post of Professor by respondent Nos.1 & 2 in the respondent No.2 institute. According to the petitioner, the following were the relevant terms of appointment in the letter dated May 01, 2007:-

"(i) the petitioner was to be governed in the matter of leave and general condition of service by the rules of D.A.V. College Managing Committee, New Delhi (respondent no.l herein) / Maharshi Dayanand University (respondent no.3)/department concerned.

(ii) the petitioner shall be a whole-time employee of the management.

(iii) the work load of the petitioner, submission of the plan and work etc. was to be determined according to the

University Grants Commission/ university rules from time to time."

3. The course of teaching for which the petitioner was appointed i.e. MBA was introduced under the Maharishi Dayanand University, Self Financing Scheme ('Scheme' in short) Rules as approved and made applicable by the respondent No.3 University to the respondent No.2. As per the said scheme, the employment of the petitioner was co-terminus with the MBA course/programme. In other words, his employment was to be continued during the duration of the said course/programme or till the superannuation of the petitioner, whichever is earlier. According to the petitioner, he was diligently discharging his duties. All of a sudden without any reason or justification, the respondent No.2 issued a letter dated May 11, 2011 to the petitioner stating that the petitioner was being provided with one month break-in-service with effect from May 11, 2011, to which the petitioner protested vide his letter dated May 16, 2011. According to him, he was not allowed to mark his attendance even after the expiry of one month period although he has been going regularly to the institute.

4. That vide Resolution No.10 dated November 14, 2010, the respondent No.1 resolved that the revised pay-scales in accordance with 6th Pay Commission be sanctioned to the regular staff of the respondent

No.2 institute with effect from January 01, 2006 and the salary in the revised pay-scales be paid with effect from August 01, 2010 (July paid in August) with 35% D.A plus 30% HRA and the arrears thereof with effect from January 01, 2006 to June 30, 2010 be paid in four equal instalments of 25%. It is also his case that the said Resolution dated November 14, 2010 regarding revision of scales to the staff of respondent No.2 was deferred by respondent No.1 because of non-compliance by respondent No.2 of certain conditions imposed on it by the Sub Committee before its implementation. By a subsequent Resolution No.55 dated January 09, 2011, the respondent No.2 resolved that the resolution dated November 14, 2010 be implemented as approved. It is averred that as per the aforesaid Resolutions of the respondent No.1, the respondent No.2 institute issued to the petitioner letter dated December 03, 2010 mentioning the grade in which the petitioner's salary would be fixed as per 6th Pay Commission recommendations and also if any arrears were approved by respondent No.1, the same shall be approved for the petitioner. It is his case that the respondent No.2 had not paid the revised salary to the petitioner in terms of the recommendations of 6th Pay Commission including the arrears with effect from January 01, 2006 in terms of the Resolutions which have been referred above.

5. Under these circumstances the petitioner filed a suit for declaration and mandatory injunction before the Civil Judge (Senior Division), Faridabad, wherein he has inter-alia sought a decree for mandatory injunction against the defendant i.e. respondent No.2 herein and one of the relief sought was as under:-

> *"(c) pass a decree for mandatory injunction in favour of the plaintiff and against the defendant and direct the defendant to compute the plaintiffs revised salary in terms of its decision/resolution to implement the Sixth Pay Commission and pay the same to the plaintiff with effect from 1st August, 2010 and also pay instalments of the arrears in accordance with the Sixth Pay Commission which have already become due and other instalments as and when they become due."*

6. According to the petitioner, after the summons were served on December 19, 2011 the respondent No.2 pre-dated a letter dated December 16, 2011 and send the same to the petitioner on December 19, 2011 by e-mail, whereby they terminated the petitioner's appointment with effect from December 16, 2011. In view of the said development, the petitioner had to amend the plaint challenging the termination letter dated December 16, 2011.

7. The respondent No.2 had filed written statement in the said suit filed by the petitioner, wherein it has taken the following stand:-

> *"(i) admitted that it is affiliated to respondent no.3 University, however wrongly contending that the service conditions of the petitioner were being only regulated by it.*

(ii) ignoring its own letter dated 3rd December, 2010 written to the petitioner, although not disputing the same, contended that the recommendation of the Sixth Pay Commission of respondent no.1 was not applicable to the petitioner and was only applicable to the regular employees working as per the guidelines of the respondent no.3 University and as such the petitioner has no right to claim applicability of the Sixth Pay Commission.
(iii) alleged that the respondent no.1 has not recommended for releasing the benefit of the Sixth Pay Commission to the contractual employees such as the petitioner."

8. In the amended written statement, the respondent No.2 had also contended that the official who had appointed the petitioner was not competent to appoint him even on contractual basis and as such the petitioner's appointment was illegal, null and void ab-initio and the subsequent letters/circulars issued by the said person were not binding on the respondent No.2 institute or its Managing Committee i.e. respondent No.1 herein.

9. That on noting the stand of the respondent No.2 that the recommendations of the 6th Pay Commission would only be applicable to the regular staff, he on advice decided to challenge the impugned action of the respondent Nos.1 and 2, as the respondent No.1 was not party in the suit filed by the petitioner before the Court of Civil Judge (Senior Division), Faridabad by way of this petition.

10. Suffice to state here, when the petition was listed before this Court on July 08, 2014, it was submitted that an application will be moved

before Civil Judge (Sr. Division) at Faridabad for deletion of prayer (c) in the suit pending before the said Court. In the subsequent proceedings on August 11, 2014, this Court noted that the amendment of the plaint was allowed by the Court at Faridabad and the relief for seeking implementation of recommendations of the 6th Pay Commission and payment of arrears therein stands deleted.

11. The respondent Nos.1 & 2 have filed a counter-affidavit. It is their case that the petition qua them is not maintainable as neither of them is an 'Instrumentality of State' or a 'State' within the meaning of Article 12 of the Constitution of India and no mandamus can be issued against a private body or an institution. Further, the petition is not maintainable in this Court inasmuch as the petitioner was employed as a Professor by the respondent No.2 institute, which is situated in Faridabad and the respondent No.2 is governed by the rules and regulations of the respondent No.3 University based in Rohtak. Further, no cause of action has arisen in Delhi. On merit, it is their case that the appointment of the petitioner was illegal, made by the then Director cum Principal – Late Mr. N.K Sharma as he does not possess the qualification of Ph.D, which is a pre-requisite in terms of rules and regulations of the respondent No.3 University/AICTE/UGC/Haryana Govt. He was offered the post of Senior Assistant Professor vide letter dated October 22, 2011 but he

refused the same. The respondent Nos.1 & 2 also pleaded that the petition suffers from delay and laches as the relief sought for in the present petition relates to the benefits of 6^{th} Pay Commission with effect from 2006 and the petition having been filed in the year 2014 there is a delay of 8 years. Even the challenge to the resolutions after 3 years is not justified. On merit, it is the case of respondent Nos.1 & 2 that the petitioner is not entitled to the benefits of 6^{th} Pay Commission report as is applicable to the employees/pensioners. However, the recommendations were made applicable by the Government of Haryana to its employee keeping in view the availability of finances.

12. The respondent No.2 being a private, un-aided, self-financing institute, does not receive any grants/funds either from the Government/UGC but manages its affairs by borrowing funds from the banks or the respondent No.1, DAV College Management Committee. The Doctrine of "Equal Pay for Equal Work" is not applicable so as to invoke the provisions of Article 226 and 227 of the Constitution of India.

13. Learned counsel for the petitioner has drawn my attention to the Scheme formulated by the respondent No.3 University (Annexure P-12) which according to him applies for engagement of all the employees, teaching and non-teaching, in connection with the affairs of running of self financed courses and programmes established and introduced under

the Scheme. He states, under the Scheme 'employees' means teaching and non-teaching employees engaged/appointed under the rules of the scheme. He has drawn my attention to clauses 8, 9 and 10 of the Scheme, which inter-alia stipulates the courses/programmes introduced under the Scheme are purely temporary in nature and will continue only so long as these are financially viable. Hence, the engagement of employees in connection with the affairs of the course/programme under the Scheme on contractual basis would be co-terminus with the course/programme. In case the University intends to discontinue a particular course/programme, the employees engaged in connection with running of the said course/programme will be duly notified about the University's intent to discontinue the course/programme and the appointment of teaching and non-teaching employees under the Scheme shall be made on contract basis in running grade with all admissible allowances and benefits (viz. annual increments, DA, medical reimbursement, gratuity and leave encashment) except pension. He has also drawn my attention to the Resolution dated November 14, 2010 at page 17, which is reproduced in the Resolution dated January 09, 2011 to contend that the benefits of the revised pay scales in accordance with 6^{th} Pay Commission has been sanctioned to the regular staff of the institute with effect from January 01, 2006 denying the same to the contractual employees like the petitioner herein. He states that despite such a Resolution the understanding of the respondent No.2 institute was that the petitioner would also be entitled to the benefits of the revised scale and had accordingly issued the communication dated December 03, 2010, thereby fixing the pay of the petitioner with basic of Rs.43,390 with grade pay of Rs.10,000. Unfortunately the said order was not given effect to. Later on Resolution dated January 09, 2011 had revived the Resolution of November 14, 2010 but the effect thereof was given only to regular employees of the respondent No.2 institute and till the filing of the petition, the petitioner has not been paid the benefits under the 6th Pay Commission. He would state that the University in response dated October 28, 2013 to the application filed by the petitioner under RTI has confirmed that self financing colleges affiliated to the University are supposed to follow the same pay scale/grades as prescribed by the Government/University. He would also answer the objections taken by the respondent Nos.1 & 2 in their reply to state that in the present petition the petitioner seeks to challenge the Resolutions dated November 14, 2010 and January 09, 2011 whereby the respondent No.1 has confined the benefits of the 6th Pay Commission only to the regular employees and not to the contractual employees like the petitioner and the Resolutions being in violation and at variance with the Scheme issued by the respondent No.3 University, the impugned action of the respondent No.1, which needs to be implemented by the respondent No.2, has public law element and amenable to the writ jurisdiction of this Court for which it is not necessary that the respondent Nos.1 & 2 should be "State" within the meaning of Article 12 of the Constitution of India. According to him, the plea of jurisdiction is also not sustainable in view of the fact that the petitioner challenges the Resolutions passed by the respondent No.1 on November 14, 2010 and January 09, 2011 in Delhi. Even though the Resolutions had the effect in Faridabad where the petitioner was working, surely a part of cause of action has arisen within the jurisdiction of this Court and the remedy against the Resolutions passed by respondent No.1 is available to the petitioner before this Court as well. Further, this Court is the forum convenience to entertain the challenge to the resolutions, as the records, pertaining to the resolutions are available in Delhi. He also states that the present petition is not hit by delay and laches as stated by the respondent Nos.1 & 2 in their counter-affidavit inasmuch as the Resolutions were passed in the year 2010-2011 and immediately thereafter the petitioner had filed a suit before the Civil Judge (Senior Division), Faridabad incorporating the relief for grant of benefits of 6^{th} Pay Commission and in view of the stand taken by the respondent Nos.1 & 2 in their written statement in the

Court of Civil Judge (Senior Division), Faridabad, that the petitioner is not entitled to the pay scales in accordance with the 6th Pay Commission being, not a regular employee, by withdrawing the prayer (during pendency), earlier prayed for in the suit, has challenged the Resolutions passed by respondent No.1 in these proceedings, the delay, if any, from 2010-2011 has been duly explained and the petitioner cannot be non-suited on this ground. He would rely upon the following judgments with regard to the maintainability of the petition as well as grant of pay scales as per the recommendations of 6th Pay Commission in terms of impugned resolutions and which pay has been duly recognized by the respondent No.3 University under the Scheme at Annexure P-12.

(a) Tamil Nadu & Ors. vs. State of Tamil Nadu (2013) 2 SCC 772
(b) State of West Bengal & Anr. vs. West Bengal Minimum Wages Inspectors Association & Ors. (2010) 5 SCC 225
(c) Digam Singh vs. Anshu Prakash & Ors. (2013) SCC Online Del 782
(d) Govt. of NCT of Delhi & Ors. vs. Victoria Massey (W.P(C) 8764/2008, decided on May 22, 2009)
(e) Oil and Natural Gas Commission vs. Utpal Kumar Basu & Ors. (1994) 4 SCC 711
(f) Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. vs. V.R. Rudani & Ors. (1989) 2 SCC 692
(g) Ramesh Ahluwalia vs. State of Punjab & Ors. (2012) 12 SCC 331
(h) Unni Krishnan, J.P. & Ors. vs. State of Andhra Pradesh & Ors. (1993) 1 SCC 645
(i) Zee Telefilms Ltd. & Anr. vs. Union of India & Ors. (2005) 4 SCC 649
(j) Chief Conservator of Forests & Anr. vs. Jagannath Maruti

Kondhare & Ors. (1996) 2 SCC 293

14. Learned counsel for respondent Nos.1 & 2 would challenge the maintainability of the petition against respondent Nos.1 & 2 on the ground that neither of them is "Instrumentality of State" nor they are performing any public duty. That apart it is his case that the present petition is not maintainable in this Court as the respondent No.2 institute is situated in Faridabad, so also the respondent No.3 University is based in Rohtak and no relief, moreso on the basis of the Scheme formulated by the respondent No.3 University would like to be granted by this Court. It is also his case that the petition is hit by delay and laches as the benefits which is being sought for by the petitioner in effect is for grant of pay scale under the 6^{th} Pay Commission with effect from January 01, 2006. Even on merits it is his submission that no reliance can be placed on the Scheme at Annexure P-12 inasmuch as the State of Haryana has enacted Haryana affiliated colleges (Security of Service) Act, 1979, which primarily governs the service conditions of the employees. That apart it his case that the present petition is nothing but an abuse of the process of law inasmuch as the petitioner having filed a petition before the Court of Civil Judge (Senior Division), Faridabad and having availed the remedy cannot now by way of this writ petition seek an identical relief which he had sought in the civil suit by cleverly challenging the

Resolutions passed by the respondent No.1. He states that the prayer as sought for by the petitioner in the present petition would not like to be granted by this Court inasmuch as the self financing scheme of the respondent No.3 clearly mentions that it is applied to courses/programmes that generate sufficient revenue and since the respondent No.2 is not earning sufficient revenue and being run on borrowings from banks and no financial aid is being received from UGC/Government, therefore, the benefits of 6th Pay Commission report has not been provided by respondent No.1 in the impugned resolutions to adhoc and contractual employees, more particularly when their employment was restricted for a limited period and not comparable with regular employees. He would state that the appointment of the petitioner was wrongly made as he does not fulfil the qualification criteria laid down in the rules and regulations framed by the University/AICTE/Haryana Government. When Late Mr. N.K Sharma became aware of the said rules of appointment, he terminated the services of the petitioner as per the terms of the appointment letter. He would rely upon the judgment of the Full Bench of this Court reported as ***2011 (124) DRJ 633 (FB) Sterling Agro Industries Ltd. vs. Union of India & Ors***., more specifically, para 33(a), to contend that the Resolutions passed by the respondent No.1 have to be implemented at

Faridabad where the respondent No.2 institute is situated or for that matter the respondent No.3 University is situated i.e. Rohtak, it would be the Court within whose jurisdiction the said authorities are situated would be the forum convenience to entertain the petition. He would also rely upon the judgment of the Supreme Court in the case reported as ***1989 (2) SCC 691 Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsa Smarak Trust & Ors. vs. V.R. Rudani & Ors.*** to contend that the relationship between the petitioner and the respondent Nos.1 & 2 being contractual in nature, the plea for grant of salary being in the realm of private law/seeking specific performance of contractual service, the present petition would not be maintainable. He would also rely upon the judgment of this Court in ***W.P.(C) 4537/2008***, ***Shri Angan Lal Aggarwal Vs. Director of Education and Ors.,*** decided on September 01, 2011, wherein the petitioner in that petition has sought a direction against the DAV Senior Secondary School, Delhi for his re-employment as a Drawing Teacher. This Court rejected the writ petition by holding, the question raised is disputed question of fact and cannot be adjudicated in a writ jurisdiction.

15. Learned counsel for the respondent No.3 would only submit that the petitioner was appointed by the respondent No.2 on contract basis at its own level. Suffice to state, nothing relevant has been stated by the

respondent No.3 in its reply.

16. Having considered the submissions made by the learned counsel for the parties, the first and foremost issue that falls for consideration is, whether this Court has territorial jurisdiction to entertain the present petition in view of the conclusion of the Full Bench in para No.33(a), which I reproduce hereunder:

> *"33(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum convenience.*
> *(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra).*

No doubt the institute where the petitioner was employed is in Faridabad but the impugned action is the Resolutions passed by the respondent No.1 in Delhi, a part of cause of action has arisen within the jurisdiction of this Court. Further, the records pertaining to the resolutions are available in Delhi as they were passed in Delhi, the petitioner is a resident of Delhi; that apart, there is no dispute on the applicability of the scheme formulated by the respondent No. 3. Considering the nature of relief prayed for, a similar objection can be taken, in that Court, where a writ petition is said to be maintainable, that Court has no jurisdiction, as the resolutions are passed in Delhi.

17. I also note that this Court in the case of ***Vishnu Security Services Ltd. Vs. Regional Provident Fund Commissioner, 2012 (5) AD (Delhi) 227*** has on an issue of jurisdiction clarified the directions given by the Full Bench in ***Sterling Agro Industries Ltd. (supra)*** in the following terms:

> *"11. It is thereafter that the Court went further and expounded the doctrine of forum conveniens with reference to a situation where original authority is in one State and the seat of the appellate authority is located in another State. Once it is categorically held in paras 25 to 27 that in such a case, the writ would be maintainable in both the Courts and also that it is the petitioner which has right to choose his forum, we are of the view that primacy to the freedom given to the petitioner needs to be respected. Therefore, we clarify that normally in such circumstances, writ would be maintainable at both the places and only in extreme cases where the Court finds that it is totally inconvenient for a Court to entertain the writ petition and the other High Court may be better equipped to deal with such a case then the doctrine of forum conveniens has to be applied. The directions of the Sterling Agro (supra) have to be understood in that manner alone, otherwise it would be negation of the principle stated in Kusum Ingots (supra), particularly paras 25 to 27 thereof. Though the doctrine of forum conveniens is accepted by the Supreme Court in Kusum Ingots (supra) which has binding force under Article 141 of the Constitution, we would also like to make some observations about this doctrine for the simple reason that once the Court has to*

> *apply this doctrine in a given situation as indicated above, there should be a proper application thereof. This necessitates exemplifying the said doctrine".*

In view of the above, the writ petition would be maintainable in this Court being the forum convenience in view of conclusion of the Full Bench in para No.33(b). Also the Resolutions passed by the respondent No.1 which have been impugned constitute material, essential and integral part of cause of action in terms of the principles laid down by the Supreme Court in the case of ***Alchemist Ltd. & Anr. vs. State Bank of Sikkim and Ors. (2007) 11 SCC 335*** and as such the submission on territorial jurisdiction needs to be rejected.

18. Insofar as the submission of the learned counsel for the respondent Nos. 1 and 2 that the writ petition is not maintainable under Article 226 of the Constitution as the respondent Nos. 1 and 2 are neither 'State' nor "Instrumentality of State" within the meaning of Article 12 of the Constitution of India, is concerned, there is no dispute that the challenge in this writ petition is to the resolutions passed by the respondent No.1 for granting pay scales to its regular staff and denying the same to the contractual employees like the petitioner. There is no dispute on the provisions of the Scheme being applicable to the contract employees as well. Clause 8, 9 & 10, which relates to the manner of appointment and

the grant of pay scales are relevant and the same are reproduced as under:-

> *"8. Nature of engagement of Employees:*
>
> *The courses/ programmes introduced under the scheme will be purely temporary in nature and will continue only so long as these are financially viable. Hence, the engagement of employees in connection with the affairs of the course/ programme under the scheme on contractual basis would be co-terminus with the course/programme. In case the University intends to discontinue a particular course/ programme, the employees engaged in connection with running of the said course/programme will be duly notified about the University's intent to discontinue the course/ programme from the ensuing academic session as soon as a decision to this effect is taken by the Executive Council.*
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> *9. Duration of engagement:*
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> *Initially the appointment will be made on contract basis for two years in the first instance and will be reviewed after completion of two years service by the committee comprising.*
>
> *(i) Dean of the Faculty Chairman*
>
> *(ii) Head/Director of the Department/Institution*
>
> *(iii) Nominee of the Vice Chancellor*
>
> *However, in the case of Head of the Department/Director of the Institution, the review Committee shall consist of Vice Chancellor, Dean Academic Affairs and Dean of the Faculty.*
>
> *On satisfactory completion of two years contract, on the recommendation of the above committee, the Vice-Chancellor may extend the contract for the period which will be co-terminus with the duration of the respective course/ programme or till superannuation, whichever is earlier.*

If the work &conduct are not found satisfactory during two years contract period, the service will be terminated on one month's notice or salary in lieu thereof.
Provided further that during the currency of a contract, the above engagement is terminable on one month's notice or one month's emoluments in lieu thereof from either side. Work performance of teachers will be monitored through annual Self Appraisal Report, and of non-teaching employees through annual confidential report.
10. Emoluments/ Salary to the staff engaged under the Self Financing Scheme:
The appointment of teaching and non-teaching employees under the Scheme shall be made on contract basis in running grade with all admissible allowances and benefits (viz. annual increments, DA, Medical reimbursement, gratuity and leave encashment etc.) except pension. The University on the recommendations of the Selection Committee/ Establishment Committee may give higher start in case of deserving cases."

19. A perusal of Clause 9 would show that the Scheme itself contemplates and recognizes the appointment of employees on contract basis initially for a period of 2 years which can be extended for a further period, which will be co-terminus with the course and programme. Clause 10 also stipulates that the appointment of teaching/non-teaching employees under the Scheme shall be on contract basis in running grade with all admissible allowances and benefits expect pension. It is clear, Resolutions are at variance with the Scheme framed by the respondent No.3 University. If that be so, there is infraction/violation of public law element or failure to discharge a public duty, which is sufficient to make a petition maintainable. In view of the settled position of law, more

recently by the Supreme Court in the case reported as ***2015 (4) SCC 670 K.K. Saxena vs. International Commission on Irrigation and Drainage and Ors.***, wherein the Supreme Court has considered its various judgments on a similar issue including the judgment in ***Shri Anandi Mukta Sadguru*** *(supra)*, wherein the Supreme Court in para Nos.14, 16 and 19 has held as under:-

> *"14. But here the facts are quite different and, therefore, we need not go thus far. There is no plea for specific performance of contractual service. The respondents are not seeking a declaration that they be continued in service. They are not asking for mandamus to put them back into the college. They are claiming only the terminal benefits and arrears of salary 'payable to them. The question is whether the trust can be compelled to pay by a writ of mandamus?*
> *XXX XXX XXX*
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> *16. The Law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission "to review the existing remedies for the judicial control of administrative acts and omission with a view to evolving a simpler and more effective procedure." The Law Commission made their report in March 1976 (Law Com No. 73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by Section 31 of the Supreme Court Act 1981. It combined all the former remedies into one proceeding called Judicial Review. Lord Denning explains the scope of this "judicial review":*

"At one stroke the courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge.

The Statute is phrased in flexible terms. It gives scope for development. It uses the words "having regard to". Those words are very indefinite. The result is that the courts are not bound hand and foot by the previous law. They are to 'have regard to' it. So the previous law as to who are--and who are not--public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the judges can develop the public law as they think best. That they have done and are doing."

19. The scope of this article has been explained by Subba Rao., in Dwarkanath v. Income Tax Officer, [1965] 3 SCR 536 at (540-41):

"This article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to

mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

20. The Supreme Court has summed up the ratio of ***Shri Anandi Mukta Sadguru*** *(supra)* in para No.32 of ***K.K. Saxena's*** case *(supra)* as under:-

"32. In para 14, the Court spelled out two exceptions to the writ of mandamus, viz. (i) if the rights are purely of a private character, no mandamus can issue; and (ii) if the management of the college is purely a private body "with no public duty", mandamus will not lie. The Court clarified that since the Trust in the said case was an aiding institution, because of this reason, it discharges public function, like Government institution, by way of imparting education to students, more particularly when rules and Regulations of the affiliating University are applicable to such an institution, being an aided institution. ***In such a situation, held the Court, the service conditions of academic staff were not purely of a private character as the staff had super-aided protection by University's decision creating a legal right and duty relationship between the staff and the management.*** *Further, the Court explained in para 19 that the term 'authority' used in Article 226, in the context, would receive a liberal meaning unlike the term in Article 12, inasmuch as Article 12 was relevant only for the purpose of enforcement of fundamental rights Under Article 31,*

whereas Article 226 confers power on the High Courts to issue writs not only for enforcement of fundamental rights but also non-fundamental rights. What is relevant is the dicta of the Court that the term 'authority' appearing in Article 226 of the Constitution would cover any other person or body performing public duty. The guiding factor, therefore, is the nature of duty imposed on such a body, namely, public duty to make it exigible to Article 226.

21. The Supreme Court in ***K.K. Saxena's*** case (supra) has also referred to its judgment in the case of ***K.Krishnamacharyulu and Ors. vs. Sri Venketaswara Hindu College of Engineering and Anr. 1997 (3) SCC 571*** that where there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizen the teacher who imparts education get an element of public interest in performance of his duties. In such a situation, the remedy provided under Article 226 of the Constitution would be available to teachers.

22. Even the argument of learned counsel for respondent Nos.1 & 2 that since no aid is provided by the Government, the respondent No.1 would not be amenable to the jurisdiction of this Court under Article 226 of the Constitution of India also need to be rejected in view of the observations already noted in the case of ***Shri Anandi Mukta Sadguru*** *(supra)*.

23. That apart in ***Unni Krishnan J.P's*** case *(supra)*, the Supreme Court in para No.79 has held as under:-

> *"The emphasis in this case is as to the nature of duty imposed on the body. It requires to be observed that the meaning of authority under Article 226 came to be laid down distinguishing the same term from Article 12. In spite of it, if the emphasis is on the nature of duty on the same principle it has to be held that these educational institutions discharge public duties. Irrespective of the educational institutions receiving aid it should be held that it is a public duty. The absence of aid does not detract from the nature of duty."*

24. While Considering a similar issue in W.P.(C) 3075/2014, decided on July 17, 2015 in the case of ***Dr. M.S. Frank vs. Delhi University & Ors.***, wherein the petitioner was working as a Teacher in St. Stephen's College affiliated to Delhi University had challenged the conduct of departmental enquiry and the penalty imposed upon him. The petition was contested by the College on the ground that the College and its management committee are not amenable to the jurisdiction of this Court under Article 226 of the Constitution of India. This Court held that where an action has an effect on the appointment/benefits and other privileges of a Teacher under statute/ordinances, the same has a public law element and the petition under Article 226 is maintainable. Similar is the case here even though the College may not be funded by the State Government/UGC/AICTE, surely it is regulated by the rules and

regulations including the Scheme at Annexure P-12 which stipulates and governs the appointment of the employees of an unaided institution like the respondent No.2. The violation thereof has a public law element and as such amenable to the jurisdiction of this Court under Article 226 of the Constitution of India. This objection of learned counsel for respondent Nos.1 & 2 needs to be rejected.

25. Insofar as the submission of learned counsel for respondent Nos.1 & 2 that the petition is hit by delay and laches, suffice to state that the Resolutions were passed in 2010-2011, the petitioner filed a civil suit incorporating the relief as prayed for in the present petition in the year 2011. The petitioner at page 'F' of the writ petition has taken the following stand:

> *".......The respondent No. 2 in its written statement in the said suit has while ignoring its own letter dated 3rd December 2010 written to the petitioner, although not disputing the same, contended that the recommendation of the Sixth Pay Commission of respondent No. 1 was not applicable to the petitioner and was only applicable to the regular employees working as per the guidelines of the respondent No. 3 University and as such the petitioner has no right to claim applicability of the Sixth Pay Commission and has alleged that the respondent No. 1 has not recommended for releasing the benefit of the Sixth Pay Commission to the contractual employees such as the petitioner.*
>
> *22.05.2014: The petitioner, left with no option is filing the present writ petition challenging the Resolutions no. 10 dated 14th November, 2010 and 55*

> *dated 9th January, 2011 of respondent no. 1 and praying for consequential reliefs".*

Further, I note, the original written statement was filed by the respondent No. 2 before the Court of Civil Judge (Senior Division), Faridabad on March 25, 2013 and a proposed amended written statement was filed on February 27, 2014. The facts demonstrate the plea taken by the petitioner in the writ petition referred above, would sufficiently explain the delay, if any, and the petitioner cannot be non-suited on that ground.

26. Insofar as the merit of the challenge is concerned, in view of clauses 8, 9 and 10 of the Scheme at Annexure P-12, the respondent No.1 could not have limited the grant of benefits of the 6th Pay Commission to the regular staff. To that extent the Resolutions are illegal and violative of the Scheme and must be read to include the applicability of the benefits of 6th Pay Commission recommendations to the contractual staff like the petitioner also.

27. During the submission learned counsel for the petitioner had stated that till his alleged termination, he was being paid the wages in pay scale as per the 5th Pay Commission. Having concluded, the denial of the benefits of 6th Pay Commission to the petitioner on the strength of the impugned Resolutions is not justified and having read the Resolutions to mean that the benefits under the said Resolutions would be applicable to

the petitioner, the petition needs to be allowed. The respondent Nos.1 & 2 are directed to grant the benefits of the 6th Pay Commission to the petitioner with effect from January 01, 2006 in terms of the pay fixation reflected at page 27 of the paper-book (Annexure P-6), till his alleged termination.

28. The petition is disposed of in terms of the above. No costs.

(V.KAMESWAR RAO)
JUDGE

AUGUST 12, 2015
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