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

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Date of Decision: 6th January, 2020

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W.P.(C) 9434/2016

ASHOK KUMAR

..... Petitioner

Through Mr. Raj Kamal and Mr.Aseem Atwal,
Advocates.

versus

THE DIRECTOR, BANARSIDAS CHANDIWALA INSTITUTE OF
PROFESSIONAL STUDIES & ANR. Respondents

Through Mr. Anuj Malhotra, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

A.K. CHAWLA, J.

By the instant petition, the petitioner, in effect, seeks issuance of a Writ of Mandamus for being reinstated to the post of Personal Assistant to the Director of Banarsidas Chandiwal Institute of Professional Studies in short, 'the Institute'.

2. Concisely, the facts emerging from the record are that on the issuance of the appointment letter dated 07.12.2010 by the Institute, the petitioner was appointed as P.A. to the Director in the pay band of Rs.5,200/- - Rs.20,200/- with initial basic pay of Rs.6,060/- + grade pay of Rs.2,000/-

and usual allowances w.e.f. 07.12.2010. As per the said appointment letter, the petitioner was to be on probation for a period of one year, which could be extended further and his services could be terminated any time, during the period of probation. It is the case of the petitioner that vide Office Memorandum dated 23.11.2011, he was confirmed to the post of P.A. to Director w.e.f. 07.12.2011. With the issuance of the letter dated 05.11.2015, the Institute terminated the services of the petitioner with immediate effect enclosing therewith a cheque of even date for Rs.27,475/- (Rupees Twenty Seven Thousand Four Hundred and Seventy Five only) towards one month's salary in lieu of the notice period. The petitioner assails the said termination letter on the premise that he has been working and rendering the services to the Institute with sincerity and hard work and his services were always appreciated and was also given due annual increments and therefore, the abrupt termination of his services without giving reasons or the requisite notice and affording an opportunity of hearing, was bad in law. As for the maintainability of the writ petition, according to him, the respondent no.1 was a State within the meaning of Article 12 of the Constitution of India and therefore, it was amenable to the writ jurisdiction of this Court. In the reply filed, the Institute, raising the question of maintainability of the instant writ petition states that the Institute was a private Institute, which was run and managed by a registered trust society and does not get any aid from the University Grants Commission or any other Government agency or organization and therefore, it was not amenable to the writ jurisdiction. Amongst others, the Institute has taken a specific plea in the reply that the office memorandum dated 23.11.2011, which, according to the petitioner, confirmed him to the post of P.A. to the Director, was forged and fabricated

and did not bear the signatures of Dr. Satish Taneja, which it purports to be. In the rejoinder, the petitioner has reiterated the assertions made in the petition denying the averments made in the reply. In the rejoinder, the petitioner also asserts that the respondent no.2—who signed the termination letter, had no authority to sign the termination letter and therefore, the termination was without any lawful authority.

3. In the submissions of the ld. counsel for the petitioner, the Institute is approved by AICTE and affiliated with GGS Indraprastha University and therefore, bound to adhere to the rules of AICTE, GGSIPU etc. and therefore, it was an instrumentality of the State. According to him, the termination letter dated 05.11.2015 issued by the respondent no.2 was not only without any lawful authority but the respondents also failed to abide by the rules of termination of services prescribed by Guru Gobind Singh Indraprastha University and All India Council for Technical Education. In addition thereto, it is contended that the dismissal of the petitioner without affording an opportunity of hearing was in violation of the principles of natural justice. In support of such submissions, reliance is placed upon '*M.P. State Agro Industries vs. Jahan Khan*' (2007) 10 SCC 88, '*L.K. Verma vs. H.M.T. Ltd & Anr*' (2006) 2 SCC 269, '*Dr. Janet Jeyapaul vs. SRM University*' (2015) 16 SCC 530, '*Kajal Jain vs. Banarsidas Chandiwal Institute of Professional Studies*', (2015) SCC Online Del 9907, '*Anandi Mukta Sadguru Shree Mukta Jeevandasswami Suvarna Jaya vs. V.R. Rudani*' (1989) 2 SCC 691, '*Anu Saxena vs. Jesus and Mary College & Ors.*' 2006 (92) DRJ 331, '*M/s Kesar Enterprises Ltd vs. State of*

U.P. & Ors.' (2011) 13 SCC 733 and, '*Paramjit Singh vs. Director, Public Instructions*' (2010) 14 SCC 416.

4. In the submissions of the ld. counsel for the respondents, the Institute was privately run and managed by a registered trust society, which did not get any aid from UGC or any other Government agency or organization and therefore, it could not be termed to be a State under Article 12 of the Constitution of India. Also in his submissions, the reinstatement of a dismissed non-teaching faculty of a private institute could not be a subject matter of writ petition. In addition thereto, according to the ld. counsel for the respondents, the petitioner had forged and fabricated the office memorandum dated 23.11.2011 inasmuch as it was not signed by Dr.Satish Taneja and so were the appreciation letters purportedly signed by the Director, who was no longer in service. It is also contended that the judgments relied upon by the ld. counsel for the petitioner pertain to the teaching staff rather than the other employees of an educational institute.

5. Before the Court adverts to the merits of the petitioner's case, it is apposite to first deal with the objections raised by the respondents as regards the maintainability of the instant writ petition. Though, on behalf of the respondents it has come to be strenuously contended that the Institute was privately run and managed by a registered trust society and therefore, it could not be said to be falling within the domain of a State or its instrumentality or an agency, the plea so raised does not take into account the fact that the Institute was created for imparting education, more pertinently, higher education. Imparting education is necessarily a State function and the Institute, though, a private institution, there can be no

denying the fact that it's very creation is for supplementing the State function. In '*Unni Krishnan, J.P. and Others vs. State of Andhra Pradesh and Others*' (1993) 1 SCC 645, the Supreme Court has categorically observed that a private institution supplementing State function discharges public duty and therefore, it is amenable to Part-III of the Constitution of India inasmuch as the private institutions in private sector augment the much needed resources in the field of education and achieve the Constitutional goal. The law so elaborated by the Supreme Court in *Unni Krishnan's* case (supra) was echoed by the Supreme Court even in '*Ramesh Ahluwalia vs. State of Punjab and others*' (2012) 12 SCC 331. In *Ramesh Ahluwalia's* case (supra) the Supreme Court went a step ahead to elaborate that issuance of writs is not confined to statutory authorities or the instrumentalities of the State and that, the writs cannot be denied, if, a person or authority concerned performs public duty not necessarily imposed by Statute. A Single Judge of this Court in *Kajal Jain's* case (supra)—relied upon by the Id. counsel for the petitioner, also entertained a writ petition against the given Institute itself and therefore, there is no gain saying in the contention of the Id. counsel for the respondents that in the absence of grant of any aid from UGC or any other Government agency, the Institute being private, is not amenable to the writ jurisdiction. Any contention raised to that effect is therefore, rejected.

6. Coming to the merits of the case, vide appointment letter dated 07.12.2010, the petitioner was appointed as P.A. to the Director of the Institute. On his such appointment, he was put on probation for a period of one year, which could be extended further. Relevant to the context, the

appointment letter reads, as follows:

"1) You will be on probation for a period of one year, which may be extended further if deemed necessary. On successful completion of probation period, you may be considered for further employment.

2) Your services can be terminated at anytime during the period of probation or its extension therefore without assigning any reason or notice whatsoever.

3) Your services shall stand terminated on completion of probation period or its extension if not confirmed for further employment in writing fifteen days before the date of expiry of probation period."

7. Though, the foregoing terms of appointment are not in dispute, the respondents dispute the factum of the petitioner's confirmation to the given post, categorically disputing the genuineness of the office memorandum dated 23.11.2011. According to them, it was a forged and fabricated document and as an illustration, in the reply, averred as follows:

"The petitioner has filed Office Memorandum dated 23.11.2011 bearing Reference No.BCIPS/ADMIN/Per.F.No.20/2011-12/402 which was never signed by Dr. Satish Taneja voluntarily and knowingly the contents of the letter which would be clear to this Hon'ble Court from the fact that it is the petitioner who was managing the letter numbering Register and the particulars of the said letter has been interpolated by the petitioner in his own handwriting, the respondents are filing the Xerox copy of the said Register containing previous page and the page on which entry has been made and further pages which would clearly indicate that at no point of time any such letter has been shown to have been entered in the Register in any manner which has been done in the instant case. The petitioner has deliberately mentioned the letter earlier to it by giving No. BCIPS/ADMIN/Per.F.No.20/2011-12/402(A) dated

23.11.2011 whereas the actual letter bears the No. BCIPS/ADMIN/Per.F.No.20/2011-12/402. The copy of the Register and the said letter is annexed as ANNEXURE R-1 and ANNEXURE R-2 respectively. It is submitted that even the figure 402 in the said letter is in the handwriting of the petitioner and whereas in the instant letter which has been filed as ANNEXURE P-2 the figure 402 is typed. It is submitted that the Respondent is filing certain samples of the letters in the hand writing of the petitioner himself where the last figure 401, 402, 403 etc. always used to be filled in filing forged documents. Besides this forgery is rampant on the fact of it as letter dated 23.11.2011 and confirmation date as given by the petitioner is 7.12.2011, nobody can believe that confirmation date would be future date to the date of issuance of the letter. Certainly letter can be a later date and the confirmation can be previous date but confirmation cannot be prospective in any case. Since the period of probation was still not over as on 23.11.2011, as per own showing of the petitioner in Para 2 of the petition, he was appointed vide letter dated 23.11.2010, he accepted said letter stating to join on 7.12.2011 as anyone whose probation was to be completed on 7.12.2011, no doubt an employee can be confirmed even earlier period of confirmation but certainly he cannot be confirmed from the future date."

8. The foregoing plea of the respondents inevitably invites returning of a finding of fact preemptively, on recording evidence. Though, the Court is not bereft of the jurisdiction to return such finding of fact, does the case in hand, invite invoking such jurisdiction, is a matter for consideration.

9. Whether the petitioner was a probationer or a regular/permanent employee of the Institute, is a material aspect to be taken note of in the given petition. The confirmation of the petitioner to the given post having been seriously disputed by the respondents, the grant of any annual increment(s)

to him does not change the character of his appointment as a probationer. The respondents not only seriously dispute the genuineness of the confirmation communication dated 23.11.2011, they equally dispute the genuineness of the other alleged appreciation letter(s) placed on record by the petitioner. In the given factual conspectus, should the Court proceed to entertain the writ petition on merits only on the premise that in issuing the termination letter dated 05.11.2015, the respondents did not follow any rule or regulation and violated the principles of natural justice, in the considered opinion of the Court, would only be a restricted consideration. Assuming, the writ is granted on this limited aspect, it would only have the effect of relegating the matter back to the respondents for a decision afresh. The reliance placed on *Paramjit*'s case (supra) by the ld. counsel for the petitioner is irrelevant in the given factual conspectus inasmuch as in the said case, the Court was considering the aspect of termination of service of a probationer in respect whereof the approval of the Director as provided for under Section 4 of the Punjab Privately Managed Recognized Schools Employees (Security of Service) Act, 1979 and not the Director of the employer was in question. The contention raised placing reliance upon the *Paramjit*'s case (supra) is therefore, misplaced and unmerited.

10. Taking note of the foregoing, in the event the Court proceeds to consider the case of the petitioner sans the confirmation letter dated 23.11.2011, it is to be observed that a probationer has no right to the post inasmuch as the object of probation is to observe and test the work, ability, efficiency, sincerity and the competence of the person and in doing so, the employer reserves the right to dispense with the services. In other words, the

status of a probationer is not substantive though it has the attributes of permanency. In this background, when one adverts to the appointment letter of the petitioner, it only speaks for initial period of probation for one year, which may be extended further, if, necessary. In addition thereto, it provides that on the successful completion of probation period, the petitioner may be considered for further employment. In other words, it neither stipulates the maximum period of probation nor does it speak for the petitioner being given status of a permanent employee on the completion of the probation period to the given post inasmuch as it only stipulates for the petitioner being considered for further employment on the completion of the probation period. What could be the maximum period of probation is nowhere provided. In the given situation, the authenticity of the purported office memorandum dated 05.11.2015 by virtue whereof, the petitioner claims to have been confirmed to the given post is of much relevance.

11. Taking note of the foregoing facts and circumstances, the Court is of the considered view that it is not a fit case for exercise of its extra-ordinary jurisdiction.

12. For the foregoing reasons, the writ petition is dismissed. Liberty is however reserved to the petitioner to assail his termination before the appropriate Court/Forum as may be available to him under law. No order as to costs.

A. K. CHAWLA, J.

JANUARY 06, 2020

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