



2023:DHC:8495



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

% **Date of order : 16th November, 2023**

+ **W.P.(C) 4349/2022 and CM APPL. Nos.12997/2022, 6390/2023, 17966/2023 and 17967/2023**

DR PRAVEEN SINGH

..... Petitioner

Through: **Mr.Rakesh Khanna, Senior Advocate with Ms.Sakshi Sharma, Mr.Aditya Archiya, Mr.Vikas Patel and Mr.Parveen Kumar, Advocates**

versus

GOVERNMENT OF NCT OF DELHI & ANR. Respondents

Through: **Mr. Anuj Aggarwal ASC with Ms.Arshya Singh, Mr.Yash Upadhyay and Mr.Aakash Dahiya, Advocates for R-1 and 2**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present petition under Article 226 of the Constitution of India seeks the following reliefs:

“(i) Issue a writ of Certiorari or any other appropriate writ/direction/order to quash the (i) Office order having no. F.No.1/22/Admn/ Soc/ RGSSH/ 2022/2514-2520 dated 09.03.2022 issued by the Respondent No. 1 and (ii) Office order having No. F.No. 1/22/Admn/Soc/RGSSH/2022/1180-184 dated 10.03.2022 issued by Respondent No.2 whereby the

Signature Not Verified

Digitally Signed By: SARIKA
BHAMOO VERMA
Signing Date: 29.11.2023
16:03:26

W.P.(C) 4349/2022

Page 1 of 19



Respondents terminated the service of the Petitioner herein as Assistant Professor (Cardiology) of the Respondent No.2 Hospital;

(ii) Issue a writ of Mandamus or any other appropriate writ/direction/order directing the Respondent to issue order extending the tenure of the Petitioner for further period;

(iii) Pass any other Order(s) as this Hon'ble Court may deem fit and proper in favour of the Petitioner according to the facts and circumstances of the present case.”

2. The brief facts necessary for the adjudication of the instant petition are as follows:

- a) The petitioner was working as Assistant Professor (Cardiology) with the respondent no.2 on contractual basis from the year 2014. The respondent no. 2 is a 650 bedded autonomous institute under respondent no. 1 and registered as a society under the Society Registration Act, 1860.
- b) During October 2021, one Dr. Neeraj Pandit, aged 65 years, joined the Cardiology Department of respondent no.2 hospital at the supervisory post of HOD Cardiology. It is alleged by the petitioner that the same was in violation of Office Memorandum dated 19th July 2018, issued by the Government of India, Ministry of Health & Family Welfare.
- c) Being aggrieved by the action of the respondent, the petitioner raised his grievances before the higher authority by way of representation dated 18th December 2021, and 24th January 2022. On 9th March 2022, the respondent no. 1 directed that the petitioner's services were to be terminated on immediate basis.



- d) Consequently, on 10th March 2022, the petitioner was issued termination letter by respondent no. 2 in compliance with the aforesaid order. Being aggrieved by the said termination letter, the petitioner approached this Court by way of instant writ petition.
3. Learned counsel appearing on behalf of the petitioner submitted that the impugned order dated 9th March 2022 has been passed without any authority and with a *mala fide* intention by the respondent no.1. The respondent no. 1 is neither the appointing authority of the petitioner nor the competent authority to issue any order *qua* the employment of the petitioner. Moreover, the petitioner is not even reporting or working under the respondent no. 1.
4. It is further contended that the Governing Council in the instant petition in their reports confirmed that the Directors of the hospital played fraud, forged the personal file, misrepresented the same to the Health Minister (GNCTD), got illegal approval and flouted various provisions of the Constitution of India as well as the Clauses 6.5, 12.1 & 31 of the respondent no.2's Memorandum of Association (hereinafter "MOA") applicable CCS Conduct Rules & CCS (CCA) Rules.
5. It is submitted that as per Clause 2.5 of the MOA, the term "Government" has been defined to mean the Lieutenant Governor of the National Capital Territory of Delhi, appointed by the President under Article 239 and designated as such under the Article 239AA of the Constitution of India.
6. It is further submitted that as per Clause 6.2 of the MOA, the



Selection Committee shall appoint an Institute-specific selection Committee for recruitment of doctors and the selection process shall be carried out at the Institute. It is furthermore stipulated as per Clause 6.5 of the MOA that the approval of the Governing Council shall be taken for the purpose of the appointment of Medical Officers, Specialist as well Teaching Faculty.

7. It is submitted that as per Clause 7 of MOA, subject to approval of the Government, doctors and other staff shall be engaged on contract- basis for a period of 5 years with 3 months of notice period for termination of the contract, for both the staff and the hospital. After the expiry of 5 years period, the extension is to continue till the age of superannuation subject to the annual performance appraisal report.

8. It is contended that as per the MOA the appointing authority of the petitioner is the Lieutenant Governor with the approval of the Governing Council of the respondent no. 2. Hence, for the termination of the employment of any Medical Officer/Specialists/Teaching Faculty from the service of respondent no. 2, the competent authority is the Lieutenant Governor and the Lieutenant Governor has to act as per the approval of the Governing Council and any such removal without the permission of Lieutenant Governor or approval of the Governing Council is *non-est* in law.

9. It is contended that the petitioner joined the respondent No.2's service in the year 2014, and already completed 8 years of service with an unblemished excellent performance record. Hence as per Clause 6.6 and 7.1 of the MOA, the petitioner can continue with the service of the respondent No.2 till he attains the age of superannuation subject to performance



appraisal.

10. It is submitted that the petitioner was the busiest doctor in the respondent No.2 and on a daily basis he examined around 300 OPD patients/conducts around hundred Echo/about 15 to 20 major heart operations. The respondent No.2 successfully extended its service to more than 50 to 60 lakhs population of East Delhi and adjoining western UP, and other areas, with the help, and dedication of efficient doctors like the petitioner.

11. It is submitted that the no show cause notice was served upon the petitioner intimating any short fall in his performance at any point of time. Hence, there is a deemed extension of the petitioner's service.

12. It is further submitted that as per Clause 6.6 and 7.1 of the MOA, based on the performance appraisal report, the petitioner has a right to continue with his service till superannuation. The petitioner had an excellent performance appraisal and no show-cause notice whatsoever, has been served upon him.

13. It is submitted that one Dr. Neeraj Pandit, a cardiologist professor who is more than 65 years old and already retired from the RML Hospital was appointed as head of the Cardiology Department in violation of OM. No. 12034/1/2014CHSV dated 19th July 2016, issued by the MOH&FW, Govt. of India. The petitioner made representation against the same on 18th December 2021, and 24th January 2021, on the ground that Dr. Neeraj Pandit having age of more than 65 years cannot hold administrative post and the same is in violation of the aforesaid Office Memorandum.



14. It is further submitted that in order to protect vested self-interest, Dr. Neeraj Pandit along-with the Director conspired and forged the records of petitioner's personal files, misrepresented to Health Minister GNCTD, fraudulently obtained illegal order of termination on 10th March 2022.

15. It is contended that the respondent No.2 earlier issued termination notice against one Dr. Shilpa Bhardwaj who filed a complaint against her fellow colleague. She also approached the Coordinate Bench of this Court in W.P (C) No. 3846 of 2020 titled ***Dr. Shilpa Bhardwaj Vs Rajiv Gandhi Super Specialty Hospital Society & Anr.***, and this Court granted interim relief in her favour vide order dated 1st July 2020.

16. In view of the aforementioned submissions, it is prayed that the instant petition may be allowed.

17. *Per Contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the arguments advanced on behalf of the petitioner and submitted that the instant petition may be dismissed being devoid of any merits.

18. It is submitted that the present petition is misconceived as the petitioner cannot seek an extension of his contract since he is a contractual employee and therefore he cannot claim any vested right thereto.

19. It is submitted that as per Clauses 6.6. and 7.1 of the MOA, as relied upon by the petitioner, it is stipulated that the extension of contract will be based upon annual performance appraisal report, up to the age of superannuation in the Government of Delhi. In the case of the petitioner, the contract of the petitioner was terminated only after considering his



performance over a period of time as well as taking into consideration the serious allegations received from patients, their family members, subordinate staff and even senior colleagues.

20. It is submitted that the appointment order of the petitioner to the post of Assistant Professor (Cardiology) issued on 6th May 2014, did not bear the signature of the Lieutenant Governor.

21. It is further submitted that as per Clause 6.1 of the MOA, the appointment of all categories of staff will be done by the respondent no. 2 except for the Director, Deputy Controller of Accounts and Deputy Director Administration, who will be selected and appointed by the Government. Moreover, as per Clause 6.2 of the MOA, the Government shall appoint an Institute- specific Selection Committee for the recruitment of doctors and the selection process shall be carried out by the institute, the Director of which is a compulsory member.

22. It is contended that as per the aforesaid clauses, the doctors are not appointed by of the Governor but by the Selection Committee, of which the Director of the institute is an inseparable part, making him responsible for the appointment as well as the termination of the various staff members including the doctors.

23. It is submitted that Clause 5 of the appointment letter of the petitioner dated 6th May 2014, entitles either party to terminate the Agreement at any time by giving one month's notice period or by paying salary of an equivalent period. Accordingly, the respondent no. 2 on finding the work of the petitioner unsatisfactorily has terminated the contract of the petitioner.



24. It is submitted that the details of the complaints are as follows:

A. Complaints by the family Members of the Patients-

The respondent has received various complaints from the patients and their family members.

A summary of the allegations in these complaints are as follows: -

- (i) The petitioner used to force the family members of the patients to buy the medical equipment and stents at exorbitant prices from a particular shop located outside the hospital.
- (ii) The stents used by the petitioner were not approved by the Hospital Administration and the said stents were procured by making the payments in cash without issuance of any receipts.
- (iii) The petitioner used to tamper with the records by erasing recordings of the cine angiography of the procedure from the storage server.
- (iv) The petitioner used to depute his own staff/doctors while carrying out medical procedures on his patients and remunerate them in cash later.
- (v) In one of the very specific complaints received from a family member of a deceased patient it was alleged that the petitioner had asked him to procure medical equipment required for stenting from a particular medical store which was charging him much higher than the price quoted by the other medical stores in the area. However, despite procuring such expensive equipment, the patient lost his life as the petitioner did not ensure proper post-operative care and abruptly asked the patient to be taken to another hospital.



- (vi) On 7th July 2022, 3 deaths took place in the Hospital due to heart blockage. One of these patients had undergone a heart stent implant (angiography) surgery conducted by the petitioner.

B. Complaints by Colleagues/Subordinate Doctors-

Numerous complaints have also been received from the junior resident doctors as well as from the colleagues regarding the misconduct of the petitioner.

Summary of the complaints filed against the petitioner is as under:

- (i) Petitioner prevented the vendors of the stents to remove their stock kept on imprest-basis in the Cath Lab because of which the unapproved stent stock is lying in the Cath Lab along with the new stock leading to financial losses.
- (ii) The petitioner used to post patients for coronary interventions every day despite explicit orders to the contrary by the administration. This was done at the cost of neglecting patients in OPD and Echo Lab as the petitioner did not attend OPD full time and instead, was performing non-emergency angiographies.
- (iii) The petitioner used to intervene and create confusion in the Department by claiming that he was the designated clinical head of Cardiology and thus, he was authorized to sign indents, letters and examine files in that capacity, thereby, creating obstacles.
- (iv) One of the senior doctors complained of physical assault committed by the petitioner after the petitioner entered into the echo room at the



time when another doctor was performing the echocardiography procedures and the petitioner started snatching/pulling the echo machine which was being used for the procedure. Despite resistance being shown by the fellow doctors and the petitioner continued pulling and suddenly started pushing and hitting the doctor with his fists and shoe.

- (v) There have been several episodes of verbal and physical abuse committed by the petitioner. During one of such instances, the petitioner entered into the CCU, where another doctor was examining a newly admitted patient and the petitioner started forcibly pushing the doctor. The petitioner then followed the said doctor in Cath Lab corridor where he started abusing and using derogatory language against the said doctor and his family. Such actions of the petitioner have often resulted into the other doctors not able to perform their duties.
- (vi) The petitioner's repeated misbehavior and intimidations extended to his fellow colleagues resulted into resignations tendered by other doctors. The petitioner used to extend serious threats to the fellow doctors and even their family members causing a lot of mental and emotional harassment to them, resulting into lodging of several criminal complaints against the petitioner. There are several multimedia evidences recorded by the members of the staff as well as by the patients, which clearly establish and corroborate the above



allegations and which may be produced before this Court or the concerned Enquiry Committee/s, as and when so directed.

C. Complaints by the Nursing Staff —

That the nursing members of the staff of the hospital have raised various complaints against the conduct and corrupt practices adopted by the petitioner from time to time, which had started affecting the mental as well as the physical health of the staff working in the Cath Lab.

A summary of the allegations arising from those complaints are as below:

- (i) The petitioner used to violate the systems or procedures designed for Cath Labs by the hospital administration and used to conduct procedures on the patients without making them undergo mandatory biochemistry tests and viral antigens leading to serious exposure of the unaware staff.
- (ii) The number of patients posted for the procedures by the petitioner far exceeded the capacity of the Cath Lab and the CCU, resulting into unbearable pressure on the staff.
- (iii) The petitioner did not follow the orders issued by the MS office regarding allotment of OPD and Cath lab days for different units and he posted his patients daily for conducting Cath procedures resulting into chaos, indiscipline and gross mismanagement.
- (iv) The nursing staff and even the nursing orderlies and housekeeping staff were abused and forced to work beyond their capacity by him. He even harassed the nursing orderlies and used indecent language to



make them work as per his wishes and against the established procedures.

- (v) The petitioner signed the 'Stent Master Register' kept in the Cath Lab where the stent and consumable stickers were pasted despite repeated requests by the staff. The petitioner also ordered the staff not to enter the angiographic procedures in the stent register.
- (vi) The petitioner used to make unauthorized doctors and workers work on the Cath floor as well as in the Cath Lab. For example, one Dr. Sudesh used to remain present in the Cath Lab while the angiographies were conducted by the petitioner.
- (vii) The Cath Lab nursing officers were harassed and blamed for the death of three patients who expired on 7th March 2022, in the Cath Lab during unnecessary interventions by the petitioner.

25. It is submitted that by taking into consideration, the aforesaid complaints against the petitioner, the respondent no. 2 passed an order terminating the employment of the petitioner.

26. In view of the foregoing submissions, it is prayed that the present petition may be dismissed.

27. Heard the learned counsel appearing on behalf of the parties and perused the material available on record.

28. It is the contention of the petitioner that he was working as an Assistant Professor (Cardiology) with the respondent no.2 on contractual basis from the year 2014. The petitioner's employment was terminated by



way of the termination letter dated 10th March 2022, issued by the respondent no. 2, and the same is illegal and *mala fide* since, the respondent no. 2 is not the competent authority. It has been further contended that the Lieutenant Governor is the competent authority to issue the termination letter to the petitioner with the approval of the Governing Council of the respondent no. 2.

29. It is further contended that there was no show-cause notice served upon the petitioner before its termination and the same is in violation of the principles of natural justice.

30. In rival contentions, it has been pleaded by the respondent no. 2 that as per Clauses 6.6. and 7.1 of the MOA, extension of contract will be based on annual performance appraisal report up to the age of superannuation and the contract of the petitioner was terminated only after considering his performance over a period of time as well as taking into consideration the serious allegations received from patients, their family members, subordinate staff and even senior colleagues. Moreover, as per Clause 6.1 and Clause 6.2 of MOA, the doctors are not appointed by the Governor rather by the Selection Committee, of which the Director of the institute is an inseparable part, making him responsible for the appointment as well as the termination of the various staff members including the doctors.

31. The question for adjudication before this Court is whether the petitioner's termination letter dated 10th March 2022, issued by an incompetent authority.

32. Before delving further into merits of the case, this Court will firstly



delve into the law pertaining to the termination of employment by an incompetent authority.

33. It is a well-settled law that the Courts shall ensure that the executive and legislature bodies act within the powers enshrined upon them by the Constitution of India as well as the various statutes governing them.

34. In case there is an employee of the State or any public authority which has been dismissed/terminated from his service without following the due process of law then the Courts under their writ jurisdiction can declare the act of dismissal to be a nullity. Hence, the said termination/dismissal of the service would have no force.

35. The Courts under its writ jurisdiction act as a *rakshak* (protector) of the employee against any illegal or wrongful termination of service by an authority which does not possess the requisite authority to pass any order pertaining to the employment conditions of such employee.

36. In this regard there is a difference in employment under statutory bodies from ordinary private employment. Where a public body is empowered to terminate employment on specified grounds or where a public body does not observe the procedure laid down by legislation, the Courts should declare such dismissal from public employment to be invalid

37. The aforesaid principle of law has been discussed by this Court in a catena of judgments. The Hon'ble Supreme Court in the judgment of ***Marathwada University v. Seshrao Balwant Rao Chavan, (1989) 3 SCC 132***, held as under:



“20. Counsel for the appellant argued that the express power of the Vice-Chancellor to regulate the work and conduct of officers of the University implies as well, the power to take disciplinary action against officers. We are unable to agree with this contention. Firstly, the power to regulate the work and conduct of officers cannot include the power to take disciplinary action for their removal. Secondly, the Act confers power to appoint officers on the Executive Council and it generally includes the power to remove. This power is located under Section 24(1)(xxix) of the Act. It is, therefore, futile to contend that the Vice-Chancellor can exercise that power which is conferred on the Executive Council. It is a settled principle that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated.”

38. The Hon’ble Supreme Court further reiterated the principle of law *qua* the issue at hand, in the judgment of ***Maharashtra State Mining Corpn. v. Sunil*, (2006) 5 SCC 96**, relevant extract of which is reproduced herein below:

“The High Court rightly held that an act by a legally incompetent authority is invalid.”

39. Hence, in view of the aforesaid judgment it is deliberated that it is a settled legal proposition that the body which has been concerned to take decisions pertaining to employment of an employee is the only competent body can empowered to take decisions pertaining to such appointment, termination, promotions or any other decision pertaining to the employment of a person employed at a public body. Such power cannot be exercised by any other authority. Any other body which takes any decision pertaining to



employment of such employee shall be deemed as an incompetent body in this regard.

40. The relevant clauses of the MOA has been reproduced herein below:

“Clause 2.5 –

The Government shall mean the Lt. Governor of the National Capital Territory of Delhi appointed by the President under Article 239 and designated as such under the Article 239 AA of the Constitution of India.

5. Human Resource: Post Creation

5.1 Before posts of any level are created, proposal in this regard with respect to pay & broad terms & conditions of engagement will require first the concurrence of the Governing Council and thereupon it will be sent to the Government for approval.

6. Human Resource: Recruitment

6.1 Appointment of all categories of staff will be done by the Society except for Director, Dy. Controller of Accounts and Dy. Director administration who will be selected and appointed by the Government.

6.2 Selection Committee for Recruitment: Government shall appoint an Institute specific selection Committee for recruitment of doctors & the selection process will be carried out at the Institute.

The Director of the Institute will be a member of the Selection committee. Government reservation policy will apply.

6.3 Recruitment of all other staff (nurses, paramedics and other allied healthcare staff) will be done through a Committee duly constituted by the Governing Council and the Committee will be headed by the Director. Government reservation policy will



be followed. The Committee will have the option to outsource the services in this regard in the interest of quality, efficiency & economy of services.

6.4 All functions related to Group D posts will be performed through outsourcing.

6.5 For appointment of Medical Officers, Specialists, Teaching faculty approval of Governing Council shall be taken. For appointment of other categories approval of the Executive Committee shall be taken and the Governing Council shall be kept informed.

6. 6 All appointments of doctors, nurses, paramedical staff, technical & allied healthcare staff & ministerial/executive staff if not outsourced shall be engaged initially on a contract for a period of 5 years with a notice period of 3 months from either side for severance of contract. Further extension will be based on annual performance appraisal report upto the age of superannuation in the NCT, Government of Delhi.

7. Human Resource: Tenure of appointment

7.1 Subject to the Government's general approval in this regard, Doctors, Nurses, paramedical staff, technical & allied healthcare staff & ministerial executive staff, if not outsourced shall be engaged initially on contract for a period of 5 years with a notice period of 3 months from either side for severance of contract. Further extension will be based on annual performance appraisal report upto the age of superannuation in the Government of Delhi.

7.2 Extension of contract in respect of all categories of staff would be based on Annual Performance Report. For extension of the contract, redundancy/abolition of the post against which



the personnel has been engaged would be taken into consideration.

Clause 31-

...'Till the Governing Council frames Conduct Rules and Disciplinary Rules for their applicability on its Doctors & staffs, CCS Conduct Rules & CCS (CCA) Rules will be applicable...'

41. Upon perusal of the clause of MOA, it is evident that for appointment as a doctor, the Government shall appoint an Institute specific Selection Committee for recruitment of doctors and the selection process will be carried out at the Institute itself. Moreover, for the purpose of appointment of Medical Officers, Specialists, Teaching faculty; the approval of the Governing Council shall be taken and the same is mandated. For appointment of other categories of employees, the approval of the Executive Committee shall be taken and the Governing Council shall be kept informed.

42. In the instant petition, as per the MOA, it is evident that the respondent no. 1 is not the competent authority to direct the termination of the petitioner. The competent authority in this regard is the Governing Council of the respondent no. 2 which is empowered to appoint or terminate the medical officers employed at the respondent no. 2 hospital.

43. Upon contemplation of the judgments referred herein above and in view of the facts and circumstances of the instant petition, this Court is of the considered view that the respondent no. 1 is not the competent authority to terminate the petitioner, and hence, the impugned order passed by the respondent no. 2 in compliance with the order of the respondent no. 1 is bad



2023:DHC:8495



in law.

44. Accordingly, the impugned order dated 9th March 2022, and 10th March 2022, passed by the respondent no. 1 and respondent no. 2, respectively, is set aside, on the grounds that the respondent no. 1 is not the competent authority empowered to take such decision. Therefore, the action of respondent no. 1 in terminating the petitioner, hereby, has attained nullity.

45. This Court finds force in the propositions put forth before this Court and accordingly, this Court is of the view that the petitioner has been able to make out a case which seeks intervention of this Court under its extraordinary writ jurisdiction.

46. In view of the aforesaid discussions of facts and law, the instant writ petition is allowed.

47. It is pertinent to mention herein that the order of this Court shall not come in way of the competent authority, to take action, required to be taken as per law, if any.

48. Accordingly, the instant petition stands disposed in view of the aforesaid terms along with pending applications, if any.

49. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 16, 2023
SV/DB/RYP

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By: SARIKA
BHAMOO VERMA
Signing Date: 29.11.2023
16:03:26

W.P.(C) 4349/2022

Page 19 of 19