
(1996) 11 AHC CK 0082

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34884 of 1994

Rajiv Kumar Srivastava

APPELLANT

Vs

Vice Chancellor, B.H.U., Varanasi & Ors.

RESPONDENT

Date of Decision : 22-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 11 AHC CK 0082

Hon'ble Judges : R.A.Sharma, J and D.K.Seth, J

Final Decision : Dismissed

Judgement

D. K. Seth, J.—In the writ petition it is alleged that the petitioner, a Master of Surgery from Banaras Hindu University, Varanasi, was appointed as Medical Officer (Surgery) in Sir Sunder Lal Hospital of the said University through an appointment letter dated 4/7th September, 1991 (Annexure 1 to the writ petition). The petitioner joined the said permanent and substantive post in the said Hospital on 7.9.1991 (Annexure 2 to the writ petition). The appointment of the petitioner was confirmed by letter dated 11.8.1993 (Annexure 3 to the writ petition) with effect from 8.9.1992. The petitioner was asked to work as Medical Officer (Casualty) in the Casualty Department of the Hospital. Though the petitioner is specialist in Surgery but even after his confirmation the petitioner was compelled to serve in the Casualty department. The petitioner's appointment in specialised subject could not be utilised in the Casualty Deptt. The petitioner had made successive representations on 23.4.1994 (Annexure 5 to the writ petition), 11.5.1994 (Annexure 6 to the writ petition) and 31.5.1994 (Annexure 7 to the writ petition) in vain. On these background the petitioner, has prayed for a mandamus directing the respondents to post the petitioner in the department of Surgery or to any of its Units and to allow the petitioner to exploit his surgical skill.

2. In the counteraffidavit the respondent, Banaras Hindu University, Varanasi, has pleaded that in the advertisement dated 20.5.1990 (Annexure CA1) the

recruitment was sought to be made in the post with designation of the Medical Officer. The advertisement never specified any designation as Medical Officer (Surgery). Since the qualification of the Medical Officer recruited was one or the other of the different specialities as specified there in, the petitioner having one of such specialities were so indicated after the actual designation, his designation Medical Officer (Surgery) was indicated. But infact, the same did not connote any special meaning. According to the respondents there is no post of Medical Officer (Surgery) in S. S. Hospital (here in after referred to as Hospital). The said Hospital and the Institute of Medical Sciences are two different units having two different kind of establishment and management. The department of Surgery is a Teaching department under the Institute of Medical Sciences (Institute for short). The petitioner having been appointed in the Hospital he cannot claim his appointment in the Institute. The petitioner may apply for the appointment in the Institute if occasion so arises. The work performed by the petitioner in the Casualty department consists both of clinical as well as administrative work. The petitioner was not appointed as a specialist. The specialists are appointed in the Institute as Professor, Readers and Lecturers.

3. By filing supplementary counteraffidavit the respondents has elaborated the contentions made in the counteraffidavit to the extent that the surgical operation of the patients lies with in the domain of Lecturers, Processors and Readers of the Institute of Medical Sciences. Specialist surgial services are rendered only by the Lecturers, Professorsand Readers of the Institute. The Hospital, as a matter of policy, has entrusted the surgical and other medical services provided in the Hospital to the Professors, Readers and Lecturers in the interest of the patients as it is felt that only persons with necessary expertise, knowledge and experience as verified by the Selection Committee, for the said posts should only handle the surgical, medical and other services of the indoor patients. The petitioner, if he so desires, he is free to face the Selection Committee for the selection of consultants teachers, who are entrusted with surgical work of the hospital. The College of Medical Sciences, under the University, was established in the year 1960. In the year 1977 it was redesignated as Institute of Medical Sciences. Since then substantive posts of Professors, Readers and Lecturers are required to render services to the patients and teaching of medical students. There is no post of Medical Officer in the Department of Surgery since the inception of the College of Medical Sciences in the year 1960.

4. By means of Supplementary Affidavit (1) the respondent contends that the petitioner is a nonteaching staff appointed in the Hospital. He is neither a teacher nor a Resident Doctor. Therefore, he is not entitled to treat Indoor patients and perform surgery. By means of letter dated 9.9.1996 (Annexure SA 1 to the Supplementary affidavit) addressed to the Deputy Registrar (Administration of the University, the Medical Superintendent of the Hospital explained the position to the extent that the Medical Officer is competent to perform only such duties as is enumerated in para 1.3 of the Office Procedure Manual framed by the University. These administrative duties have been duly approved by the

Executive Council vide resolution No. 202 adopted in its meeting held on 2/3rd August 1984 (Annexure SA2). By reasons of the provisions contained in the Manual the petitioner has to perform his duties as enumerated there in. No Medical Officer of the Hospital perform surgery. The petitioner was not recruited under Statute 27 of the Statutes framed by the University. Therefore, he cannot claim himself to be a Member of the Teaching Faculty of the Department of Surgery, run under the Institute of Medical Sciences. Therefore the petitioner cannot claim relief, as prayed for in the present writ petition. It is further stated that Dr. S. P. Pandey is also holding Post Graduate Degree in Surgery. There is no post of Medical Officer (Surgery) in the Hospital.

5. Supplementary counteraffidavit (II) was filed on behalf of the respondents in order to contend that the Institute and the Hospital are two separate establishments with two separate controlling officers. As a matter of policy the Hospital staff treats the patients in the Casualty Department where the patients are admitted for a short period. Whenever any specialised treatment is necessary the same is done in the Indoor department of the Hospital by the Professors, Readers and Lecturers of the Institute. The same is the matter of internal administration of the Hospital itself.

6. In the rejoinderaffidavit the petitioner reiterated the statements made in the writ petition. In the said rejoinder affidavit several letters of appointment given to some doctors were annexed but the same does not help the petitioner materially inasmuch as in each of these appointments it was indicated that these were subject to the Statutes, Rules and Regulations etc.

7. In the supplementary rejoinderaffidavit filed on 6.9.1995 the petitioner has annexed some other appointment/confirmation letters but the same also does not help him materially for the same reason.

8. In the supplementary rejoinderaffidavit filed on 3.4.1996 the petitioner has repeated the same statement. In the supplementary rejoinderaffidavit II filed on 9.9.1996 the petitioner claimed that he should be allowed to perform the duties of operation.

9. We have heard the learned counsel for the petitioner, the learned Standing Counsel and the learned counsel for the University. Each of them strenuously argued their respective cases to bring home the points in favour of the respective parties.

10. Admittedly, as it appears from Annexure CA 1 the advertisement was made for the post of Medical Officers in the aforesaid Hospital for eleven posts and in the grades mentioned prescribing qualifications essential and desirable as would be apparent therefrom as quoted below:

"Advertisement No. 6/198990 Last Date 28.5.1990

DETAILS OF QUALIFICATIONS

13. Lecturer In Molecular Biochemistry (one) Qualifications Essential (1) M.D. (Biochemistry) MBBS with M.Sc. (Medical Biochemistry) Ph.D (Medical Biochemistry) D.Sc. (Medial Biochemistry)

Note. Those who have applied in response to earlier advertisement need not apply again.

14. Lecturer in Prasuti TantaastreeRoga (One) Faculty of Ayurveda)

Qualifications Essential. (1) AMS/ABMS or an equivalent qualification in Ayurveda recognised by the University

(2) D.Ay. M/M.D. Ay. in the subject or equivalent Postgraduate Qualification in the subject.

Desirable : (1) Publications in the standard journals

(2) Knowledge of Modern Medical Sciences and Sanskrit.

S.S. HOSPITAL

15. MEDICAL OFFICERS: (Eleven Posts)

Grade . Rs. 22004000 + NPA as admissible under rules

Qualifications Essential (1) MBBS or equivalent degree recognised by the Medical Council of India

(2) M.D./M.S. Degree in Medicine, Surgery, Obstetrics and Gynaecology, orthopaedics.

Desirable. Two years working experience in big Hospital attached with Medical College.

16. CHIEF DIETICIAN (One) Grade: Rs. 7001600 (Prerevised)

Qualifications Essential M.Sc. in Nutrition/Dietetics/Home Science with 5 years experience in teaching Hospital.

OR

B.Sc. with Nutrition/Dietetics/Home Science with 10 years experience in a big Hospital attached to a teaching Institution.

Desirable. Teaching experience in the field"

11. Thus it appears that the advertisement never required any Medical Officer of any speciality. Neither it had fixed up as to in which speciality each number of posts are available. The qualification has been laid down as; M.B.B.S. or equivalent degree and M.D. and M.S. degree in Medicine, Surgery, Obstetrics and Gynaecology. The desirable was two years working experience in big Hospital attached with Medical College. Therefore it was never advertised that the Medical Officer (Surgery) is the requirement. Then again the duties and responsibilities of

the Officer in the Hospital, as has been prescribed in the "Office Procedure Manual" does not support the contention of the petitioner. Inasmuch as Para 1.3 of the said Manual, as is apparent from Annexure 2, indicates the duties of the Medical Officer in the following manner:

"1.3. Medical Officer/Assistant Medical Superintendent

1. Sanitation
2. Medical Stores, responsibilities confined to G.F.R.106 and 107
3. Surprise stock verification of stores and cash
4. Detailing of ambulances
5. Casualty Emergency Service and O.P.D.
6. Security and fire fighting.
7. Call duty after office hours.
8. Any other duty that may be specified by the Medical Superintendent from time to time."

12. Now the appointment of the petitioner is subject to the Statutes, Rules and Regulation etc. If the Manual prescribes duty of the Medical Officer, as indicated above, in that event the petitioner cannot claim anything in excess or outside the scope thereof after having accepted the appointment, which specified that the same was subject to Statutes, Rules and Regulations etc.

13. The Hospital and the Institute are being treated as two separate establishments and being controlled and managed by two different controlling officers having different objects and performing different duties for different purposes. As claimed by the respondents the same is by way of policy with regard to its own administration. The question is that of internal arrangement or administration of the establishment by the authorities concerned. It is purely an administrative affair of the Institute and Hospital itself for the purposes of congenial working of the two establishments having regard to its purpose and object with which the Court is in no way concerned. The placement of the petitioner in a particular duty is internal administrative affair. Nothing has been shown to us that the State cast upon the authority any duty to allot a particular job upto the liking of the petitioner. The materials produced before this Court does not spell out any "legal right in favour of the petitioner under which the authorities are bound to allow the petitioner to perform such duties as desired by him. Whatever may be a ground resulting into grievances of the petitioner it is immaterial unless the petitioner is able to make out a case indicating existence of legal right on which he can base his claim.

14, It is an established principle that the power of the High Court to issue writ under Article 226 of the Constitution can be exercised for twofold purposes namely, enforcement of a fundamental right as well as nonfundamental or

ordinary legal right, as has been observed in *State of Orissa v. Madangopal*, 1952 SCR 28 at page 33; *Fertilizer Kamagar Union v. Union of India*, AIR 1981 SC 344 (Para 10); *Calcutta Gas Company v. State of West Bengal*, AIR 1962 SC 1044 at pp. 1047-48. This power includes power to issue a writ for other purposes as enunciated in the case of *Madan Gopal* (supra) and *Fertilizer Kamgar Union* (supra). The expression "for any other purpose occurring under Article 226 of the Constitution being the purpose for which writ can be issued according to the well established principles as has been observed in the case of *Election Commissioner v. Saka Venkata*, 1953 SCR 1144, *Baaappa v. Nagappa*, AIR 1954 SC 440. By reason of the first part of Article 226 of the Constitution writ may be issued only after its finding that fundamental right of the parties have been infringed but under Second Part, writ can be issued on the finding that legal right of the party has been infringed vide *Samarth Transport Company v. Regional Transport Authority*, AIR 1961 SC 93 (at p. 95). Any other purpose in short means enforcement of any legal right as has been held in the case of *Madan Gopal* (Supra), *Fertilizer Kamgar* (supra) and *Calcutta Gas Company* (supra) and the performance of any legal duty. A legal right means any legally enforceable right includes contractual right other than mere personal rights vide *Banchhanidhi v. State of Orissa*, AIR 1972 SC 843 (Para 78). The relief under Article 226 of the Constitution is not available for vindicating mental or sentimental injury vide *D. G. Vudyalaya Association v. State of U.P.*, AIR 1962 All 187 (at p. 191) or to enforce a contract which is not supported by any statutory force vide *Divisional Forest Officer v. Ram Sanahi*, AIR 1973 SC 205; *State of Punjab v. Balbir*, AIR 1977 SC 1717; *Divisional Forest Officer v. Bishwanath*, A.I.R 1981 SC 1368; or a contract which appertains to the realm of private law vide *Kulchinder v. Hardayal*, AIR 1976 SC 2216; *Calcutta Gas Company* (supra) *Prem Sagar v. Standard Company*, (1964) 5 SCR 1030]; and *Ear Shanker v. Deputy Commissioner* AIR 1975 SC 1121 (Para 2122).

15. As we have seen that the petitioner was appointed subject to the Statutes, Rules and Regulation etc. The rules as provided in the office Manual has prescribed certain duties of the Medical Officers, as referred to in Para 11 hereinbefore. The petitioner seeks to enforce the right contrary to the said rule. The petitioner has not been able to prove any contract contrary to the said rules. The alleged pleading that the petitioner was appointed as Medical Officer (Surgery) for the purposes of performing specialised service in Surgical does not form a contract statutory enforceable as such. The grounds pleaded being that of sentimental and personal injury namely, that he is experience and skill is being rusted and his future career advancement is being obstructed, appears to be sentimental and personal injury. The petitioner has not been able to show any law under which he can claim alleged right he is seeking to claim here to term the same to be a legal right enforceable under law, according to the principles established through the ratio decided in the cases referred to above.

16. On the facts and in the circumstances of the case we have not been able to find out any infringement of legal right of the petitioner enforceable through

invocation of jurisdiction under Article 226 of the Constitution. The petitioner has not been able to establish his alleged right as his legal right. Therefore, we do not think it to be a fit case for interference by exercising discretion under Article 226 of the Constitution.

17. In the result the writ petition fails and is accordingly dismissed. There will be, however, no order as to costs.