

**(2003) 10 DEL CK 0045**  
**In the Delhi High Court**  
**Case No : CW No. 691 of 2001**

Union of India (UOI) and Others

APPELLANT

Vs

Hakim Wadud-ul-Hasan

RESPONDENT

**Date of Decision :** 23-10-2003

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 498, 498A

**Citation :** (2003) 10 DEL CK 0045

**Hon'ble Judges :** Madan B. Lokur, J;D.K. Jain, J

**Bench :** Division Bench

**Advocate :** Rekha Palli, for the Appellant; Ashok Gurnani, for the Respondent

**Final Decision :** Allowed

## **Judgement**

Madan B. Lokur, J.—The Petitioners are aggrieved by an order dated 23rd November 2000 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the Tribunal). By the impugned order, the Tribunal allowed O.A. Nos. 1498 and 1076 of 2000 both filed by the Respondent herein. It is not clear what was the relief prayed for in O.A. No. 1076 of 2000. Indeed, there is no reference to the contents of this O.A. in the writ petition filed before us. In the circumstances, we would base our decision on the facts, as they appear relevant to O.A. No. 1498 of 2000.

2. The Petitioners appointed the Respondent as a Unani Physician (Hakim) on an ad hoc basis with effect from 30th June 1983. He joined the post on 9th August 1983. At that time, the relevant recruitment rules in force from 7th January 1975 prescribed an essential qualification of a diploma or degree for appointment to the post. The Respondent was a diploma holder and was, Therefore, entitled to be appointed to the post of Unani Physician.

3. On 24th September 1986, the recruitment rules applicable to the post of Unani Physician underwent a change and the essential qualification for appointment to the post of Unani Physician was a degree (which the Respondent

did not possess).

4. It seems that sometime in 1992, the Petitioners decided to fill up some posts of Unani Physician. The Respondent appears to have apprehended that in view of the amendment to the recruitment rules, the Petitioners may take some action not quite palatable to him. Accordingly, the Respondent filed O.A. No. 2832 of 1992 in the Tribunal praying for the regularization of his services. The question that the Tribunal took up for decision was whether the respondent who had been continuously working against the post of Unani Physician since 1983, was entitled to be considered for regular appointment to the post of Unani Physician in accordance with the recruitment rules of 1975 or the recruitment rules of 1986. The Tribunal, in its decision dated 15th December 1997, expressed the opinion that the Respondent was entitled to be considered for regular appointment to the post of Unani Physician in accordance with the 1975 recruitment rules. Accordingly, the Tribunal directed that the Respondent's claim for the post of Unani Physician be considered in accordance with the recruitment rules notified in 1975. The Tribunal further directed that,

""In any event since the applicant is working without interruption since 1983, he shall not be removed from service except in accordance with the rules and his services shall be considered if he is selected as regular from the date of his initial appointment. It is further clarified that in case the applicant is found eligible in accordance with the erstwhile Recruitment Rules existing at the time when the vacancy arose, the applicant will be entitled to all consequential benefits in accordance with the said Recruitment Rules.""

5. Pursuant to the order dated 15th December 1997, the Union Public Service Commission (UPSC) in accordance with the 1975 recruitment rules considered the case of the Respondent (on 20th July 1998) for regularization in the post of Unani Physician. Unfortunately, the Respondent was found unfit for appointment. Consequently, by an order dated 4/7th September 1998, the services of the Respondent were terminated with immediate effect.

6. Feeling aggrieved by the termination of his services, the Respondent filed O.A. No. 2058 of 1998 in the Tribunal. In this O.A. the Respondent prayed for setting aside his termination order as well as for regularization of his services from the date of his ad hoc appointment, that is 9th August 1983. The Tribunal disposed of the O.A. on 13th December 1999 by setting aside the order of termination dated 4/7th September 1998 and giving a direction to the Petitioners to send the ACR dossiers of the Respondent to the UPSC for considering his case for regularization. It was also ordered that the UPSC should be informed that the criminal case against the Respondent (under the provisions of Section 498-A of the IPC) has since ended in his acquittal on being found not guilty of the charge.

7. Subsequent to the order dated 13th December 1999, the UPSC filed a Review Application in the Tribunal, being RA No. 130 of 2000, in which it was submitted that the case of the Respondent had earlier been considered for regularization

and that the Respondent was found unfit. As such, there was no occasion for the Tribunal to direct the UPSC to regularize the Respondent in the post of Unani Physician. By an order dated 26th May 2000 the Tribunal dismissed the Review Application observing that it had not directed the regularization of the Respondent but had only directed that his case be considered for regularization. As such, the order dated 13th December 1999 did not merit any review.

8. On his part, the Respondent filed a contempt petition being C.P. No. 124 of 2000 against the Petitioners for not complying with the order dated 13th December 1999 passed by the Tribunal in O.A. No. 2058 of 1998. By an order dated 1st August 2000 the contempt petition was disposed of since the case of the Respondent had been sent to the UPSC for the purpose of regularizing his ad hoc services but the UPSC did not find him fit for regularization. Liberty was, however, given to the Respondent to agitate any other grievance that he may have, in accordance with law.

9. It transpires from the records of the case that when the ACR dossier of the Respondent was sent to the UPSC pursuant to the order dated 13th December 1999 passed by the Tribunal, the UPSC was informed by the Ministry of Health and Family Welfare through a letter dated 20th January 2000 that the Respondent ""is not clear from Vigilance angle and has doubtful integrity."" The UPSC was also informed that the Respondent is not fit for government service.

10. Under these circumstances, the Respondent filed O.A. Nos. 1498 and 1076 of 2000 in the Tribunal. The relief claimed by the Respondent in O.A. No. 1498 of 2000 was for setting aside the decision taken by the Petitioners to the effect that the Respondent was not fit for regular appointment as a Unani Physician and for a fair reconsideration of his case for regularization. The Respondent also prayed for payment of his pay, allowances and other consequential benefits.

11. While allowing the O.A. filed by the respondent the Tribunal directed the Petitioners (by the impugned order) to give effect to the order dated 13th December 1999 passed in O.A. No. 2058 of 1998 whereby the termination of the Respondent was set aside. It was also directed that the Respondent be reinstated in service on ad hoc basis from the date of his termination and that he would thereupon be entitled to full back wages. The Tribunal also directed the UPSC to reconsider the case of the Respondent or regularization by Constituting a fresh committee consisting of persons different from those Constituting the earlier committee. The fresh committee so constituted was directed to consider the case of the Respondent without being influenced by the communications given by the Ministry of Health and Family Welfare casting a doubt on the integrity of the Respondent and without being influenced by the earlier rejection of the case of the Respondent by the UPSC. The Tribunal also gave certain other consequential directions.

12. We heard learned counsel for the parties on 17th September 2003 when orders were reserved.

13. First and foremost, we are totally at a loss to understand why the order dated 13th December 1999 setting aside the termination of the Respondent was not given effect to by the Petitioners by reinstating him in service. It is true, as observed by the Tribunal in its order dated 26th May 2000, that there was no direction to regularize the services of the respondent but that did not mean or imply that the Respondent was not required to be reinstated in service. The quashing and setting aside of the order of termination passed on 4/7th September 1998 simply meant that it did not exist for all practical purposes. Resultantly, the order of termination could not be operative and, Therefore, the Respondent had to be reinstated in service, in the same capacity in which he was shunted out, that is on an ad hoc basis.

14. In the impugned order, the Tribunal has merely directed the Petitioners to comply with its earlier order dated 13th December 1999 in letter and in spirit. Consequently, we find no error in the impugned order directing the reinstatement of the Respondent in service in an ad hoc capacity from the date of his termination.

15. The natural consequence of the Respondent being put back in service under these circumstances is that he is entitled to all consequential benefits, unless otherwise ordered by the Tribunal. The termination of the services of the Respondent was not by way of a punitive action or as a result of any misconduct committed by him. There was no stigma attached to the termination. Consequently, in the absence of any specific direction by the Tribunal to the effect that the Respondent should be denied consequential benefits on his reinstatement, the Petitioners ought to have reinstated him with all consequential benefits. They failed to do this. The Tribunal, Therefore, did not err when it directed the Petitioners, in the impugned order, to reinstate the Respondent with all consequential benefits including back wages.

16. The second principal direction given by the Tribunal is that the case of the Respondent for regularization be reconsidered by the UPSC by forming a fresh committee for that purpose and uninfluenced by the communications of the Ministry of Health and Family Welfare casting a doubt on the integrity of the Respondent.

17. The Tribunal felt the need for a reconstitution of the committee only to eliminate a likelihood of bias. In this regard, it must be appreciated that the UPSC is an expert body created under the Constitution. It is expected to act in accordance with law and we have no doubt that it will. Consequently, the membership of the committee reconsidering the case of the Respondent for regularization should ordinarily be left to the discretion of the UPSC.

18. In so far as the procedure for reconsidering the case of the Respondent for regularization is concerned, the UPSC has indicated in its Review Application filed before the Tribunal that the Respondent was interviewed by a board presided over by a member of the UPSC, his ACRs for the last five years were assessed by

the same board and clearance from the vigilance angle was obtained from the concerned Ministry (his employer). It is nobody's case that this procedure adopted by the UPSC was improper or unfair. What was objected to by the Respondent before the Tribunal (and before us) was that a doubt was unnecessarily cast on his integrity, and this doubt was apparently because of a criminal case instituted against him under the provisions of Section 498 of the IPC, in which case the Respondent was subsequently acquitted.

19. In this regard, it is worth noting that it has been stated by the Union of India, through the Ministry of Health and Family Welfare, in its counter affidavit filed before the Tribunal in O.A. No. 1498 of 2000 that in compliance with the order passed on 13th December 1999, the ACR dossiers of the Respondent were sent to the UPSC on 20th January 2000, and "the Commission was also informed that the applicant was in jail from 24.3.90 to 2.4.90 in Aligarh in a criminal case No. 4448/91 u/s 498-IC and that he was not found guilty of the charge." The UPSC in its Review Application filed before the Tribunal has adverted to the communication dated 20th January 2000 and has mentioned that this communication clearly stated that the Respondent "is not clear from Vigilance angle and has doubtful integrity. Hence he is not fit for appointment in Govt. service."

20. Since a lot turned on the contents of the letter dated 20th January 2000, a Division Bench of this Court directed the Petitioners to place on record a copy of the said letter. This has since been done. The text of the letter dated 20th January 2000 reads as follows:-

"I am directed to refer to your letter No. F.1/169/92-R.I., dated 13.8.1998 regarding regularisation of adhoc service in respect of Hakim Wadudul Hasan in the post of Unani Physician and to say that in pursuance of the Commission's recommendation, the adhoc services of Hakim Wadudul Hasan were terminated vide Order No. C.11018/4/92-CHS VI/ISM(E-I), dated 4th/7th September, 1998 and appointed Dr. Mustaq Ali in his place.

2. Against the termination order dated 4th/7th September, 1998, Hakim Wadudul Hasan filed the OA No. 2058/98 in the CAT. The Hon'ble Central Administrative Tribunal, New Delhi in their judgment dated 13.12.1999 ordered sending his A.C.R. To Union Public Service Commission for consideration for the purpose of regularisation.

3. It is also informed that Hakim Wadudul Hasan was in jail from 24.3.90 to 2.4.90 in Aligarh in a criminal case No. 4448/91 u/s 498-A IPC. However he was not found guilty of the charge.

4. Nevertheless, it is stated that Hakim Wadudul Hasan availed admissible leave on fake grounds to cover-up the period of his police custody from 24.3.90 to 2.4.90.

5. The matter was taken up with Department of Personnel and Training. That

department have advised as under:

- (i) Suspension of Hakim Wadudul Hasan w.e.f. 24.3.90 to 2.4.90.
- (ii) Subsequent revocation of suspension w.e.f. 3.4.90 i.e. the date of his joining duty.
- (iii) Initiation of disciplinary action against Hakim Wadudul Hasan for suppressing the fact of his arrest.

6. As Hakim Wadudul Hasan is working on adhoc basis, no action could be initiated against him under CCS (CCA) rules, 1965.

7. It is also stated that Hakim Wadudul Hasan is not clear from Vigilance angle and has doubtful integrity. Hence, he is not fit for appointment in Govt. Service. The A.C.R. Dossier of Hakim Hasan is enclosed and a copy of the judgment of Hon"ble CAT dated 13.12.99 also enclosed. This copy of the judgment was received by the Govt. Counsel on 22.12.99. Therefore, the judgment of the Hon"ble CAT has to be implemented before 22.2.2000."

21. A bare perusal of the letter dated 20th January 2000 shows that the Ministry of Health and Family Welfare had faithfully intimated all the relevant facts of the case to the UPSC. In this view of the matter, we do not think it necessary for the Petitioners to once again consider the case of the Respondent for regularization.

22. However, where the Ministry of Health and Family Welfare has faulted is in ""also"" stating (in paragraph 7 of the letter) that the Respondent is not clear from the vigilance point of view and is a person of doubtful integrity. In other words, apart from the fact that the Respondent had availed admissible leave on fake grounds and suppressed his arrest, there appears to be some other material on the basis of which it is opined that the Respondent is a person of doubtful integrity. What that material has not been indicated or even suggested. The allegation made against the Respondent appears to be a bald one, which is not sufficient. The Ministry should have informed the UPSC, if they had any material relating to the Respondent's integrity and if the Ministry should have given some indication of the reason or basis for its opinion and left the UPSC to draw its own conclusion about the importance of the material available, if any, and the fitness of the Respondent to continue in government service. This was not done and only a bald allegation was made impinging on the Respondent's integrity. To this limited extent, Therefore, we are of the view that the Petitioners had erred and so the case of the Respondent would require reconsideration by the PSC only limited to the aspect of the Respondent's integrity.

23. Consequently, we are of the view that the writ petition deserves to be allowed only to a limited extent indicated above. It is ordered accordingly. It is, however, made clear that since the order of termination dated 4/7th September 1998 was quashed and set aside as far back as on 13th December 1999, the Petitioners should immediately reinstate the respondent but on an ad hoc basis; the Respondent will be given all consequential benefits on his reinstatement,

including back wages. The Ministry of Health and Family Welfare should resubmit the case papers and dossier of the Respondent to the UPSC, who should then reconsider the case of the Respondent for regularization, keeping in view the observations made by us. These directions should be complied with within two months from today and in any case before 31st December 2003.