

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 12227 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

DINESH SHARAN THAKUR
Versus

DR. M K SHAH MEDICAL COLLEGE AND RESEARCH CENTRE

Appearance:

PARTY IN PERSON(5000) for the Petitioner(s) No. 1

MS DISHA N NANAVATY(2957) for the Respondent(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 4

VIKAS V NAIR(7444) for the Respondent(s) No. 2,3

CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 22/02/2022

CAV JUDGMENT

- By way of this petition, under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

“(A) to quash and set aside the office order dated 14.7.2021 of reduction of rank of the petitioner, and further declare the same as unconstitutional, illegal, stigmatic and violative of principle of natural justice.

(B) to direct the respondent Nos.2 and 3 to adjudicate the issues raised in the notice dated 23.7.2021 within stipulated time and also action to be taken in against of guilty as per Rule applicable by Court of law including constitution of Gender Harassment Committee Inquiry Report as constituted by respondent No.1. “

2. The facts in brief are as under:

2.1. The petitioner is a degree holder holding M.D. in Anesthesia from AIIMS, New Delhi. The petitioner was engaged by the respondent No.1 Dr. M.K. Shah, Medical College of Research Center on post of Professor and Head of Department (Anesthesia) on 17.3.2017. He joined on 18.3.2017.

2.2. On 12.6.2021, the petitioner addressed a

letter to the Medical Superintendent of the respondent No.1 college that one Anesthesia Assistant - Ms. Vedangi Prajapati was irregular and remaining absent. She was orally warned in presence of another co-workers.

2.3. It is the case of the petitioner that on 23.6.2021, he received a call from one Dr. Falguni Patel summoning him for interrogation in one Gender Harassment Committee at 10.30 am. The petitioner appeared and came to know that this was pursuant to a complaint filed by Vedangi Prajapati.

2.4. It is the case of the petitioner that by an order dated 14.7.2021 as a result of the report of the committee the charge of Head of Department of Anesthesia has been taken over from the petitioner.

3. Dr. Dinesh Thakur appeared as party in person and made the following submissions:

3.1. The order dated 14.7.2021 amounts to

reduction in rank without any reasons and amounts violation of the Rules framed under the Indian Medical Council Act, 1956.

3.2. The petitioner submits that the order is without legal sanctity and outcome of the interrogation of Gender Harassment Committee. On such petty issue, the petitioner has been removed from the post of HOD.

3.3. Dr. Thakur would submit that no charge-sheet or any opportunity of hearing was given and, therefore, the order is bad.

3.4. The action of reduction in rank is in violation of Section 51(A) of the Gujarat University Act.

3.5. Dr. Thakur would submit that by the order, petitioner's future employment opportunity will be affected. The order of reduction is a punishment order without any charge-sheet and

attracts stigma.

3.6. Dr. Thakur has filed extensive written submissions and submitted that a petition under Article 226 of the Constitution of India against the respondent No.1 is maintainable. The respondent University is governed by Medical Council of India Regulations. Reliance is placed on several decisions namely; **(a) Roychan Abraham v. State of UP of the Allahabad High Court, (b) Nimmy Rose Gems v. LIC of India of the Kerala High Court dated 8.2.2022 (c) Ms. Mohini Jain V. State of Karanatak and others dated 30.7.1992 & (d) Medical Council Regulations are also annexed to the Written Submissions without pointing out any regulation which applies to the case of the petitioner.**

4. Mr. Mitul Shelat, learned counsel with Ms. Disha Nanavati, learned advocate for the respondent No.1 made the following submissions:

4.1. That the petitioner was engaged after his retirement from service. He was given charge as HOD, but his appointment was only to the post of Professor. Only a charge which was given to the petitioner has been withdrawn.

4.2. A petition under Article 226 of the Constitution of India is not maintainable against the respondent which is a private college. It is administered by a Trust. The petitioner has no fundamental right that to be continued to be given a charge. The dispute is in realm of the private dispute, there is no reduction in rank and, the petition is therefore not maintainable. Reliance is placed on a decision in the case of ***Ram Krishna Mission v. Kago Kuniya reported in 2019 (16) SCC 303***. Para Nos.31 to 34 of such decision were relied upon.

4.3. Mr. Mitul Shelat would further submit that the dispute between an employee like the present petitioner and the respondent college can be

adjudicated before the Gujarat Education Institutional Services Tribunal. Therefore, he has an alternative remedy either before the Tribunal or by filing a civil suit.

4.4. Even otherwise, what is withdrawn is charge which is not reduction in rank. There is not enforceable right. He places reliance on the following decisions:

(a) State of Punjab and others v. Arun Kumar Aggarwal and others reported in 2007(10) SCC 402, Paras 13 to 15 thereof.

(b) Ramakant Shripad Sinai Adval Palkar v. Union of India and others reported in 1991 (Supp) (2), SCC, 733

(c) Pabitra Mohan Dash and others v. State of Orrisa and others reported in 2001(2) SCC 480, Para 7 &

(d) *Bharat Beedl Works (Pvt.) Ltd. and another v. Commissioner of Income Tax reported in 1993(3) SCC 252, Para 11.*

5. Having considered the submissions made by the learned advocates for the respective parties, the preliminary issue with regard to the maintainability of the petition needs to be considered. It is in this context that the question of maintainability of the present petition needs to be decided. Merely because the respondent No.1 college is governed by Rules of the MCI and imparts medical education that by itself will not make the institution a public authority. A decision in the case of ***Ram Krishan Mission (Supra)*** holds as under:

“31. Before an organization can be held to discharge a public function, the function must be of a character that is closely related to functions which are performed by the State in its sovereign capacity. There is nothing on record to indicate that the hospital performs functions which are akin to those solely performed by State authorities. Medical services are provided by private as well as State entities. The character of the organization as a public authority is dependent on the circumstances of the case. In setting up the hospital, the Mission cannot be construed as having assumed a public function. The hospital has no monopoly status conferred or mandated by law. That it was the first in the State to

provide service of a particular dispensation does not make it an 'authority' within the meaning of [Article 226](#). State governments provide concessional terms to a variety of organizations in order to attract them to set up establishments within the territorial jurisdiction of the State. The State may encourage them as an adjunct of its social policy or the imperatives of economic development. The mere fact that land had been provided on a concessional basis to the hospital would not by itself result in the conclusion that the hospital performs a public function. In the present case, the absence of state control in the management of the hospital has a significant bearing on our coming to the conclusion that the hospital does not come within the ambit of a public authority.

32. *It has been submitted before us that the hospital is subject to regulation by the Clinical Establishments (Registration and [Regulation](#)) Act 2010. Does the regulation of hospitals and nursing homes by law render the hospital a statutory body? Private individuals and organizations are subject to diverse obligations under the law. The law is a ubiquitous phenomenon. From the registration of birth to the reporting of death, law imposes obligations on diverse aspects of individual lives. From incorporation to dissolution, business has to act in compliance with law. But that does not make every entity or activity an authority under [Article 226](#). Regulation by a statute does not constitute the hospital as a body which is constituted under the statute. Individuals and organizations are subject to statutory requirements in a whole host of activities today. That by itself cannot be conclusive of whether such an individual or organization discharges a public function. In *Federal Bank (supra)*, while deciding whether a private bank that is regulated by the [Banking Regulation Act, 1949](#) discharges any public function, the court held thus:*

"33. ...in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory

obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under [Article 226](#) of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under [Article 226](#) of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank..." (emphasis supplied)

33. Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in *K K Saksena (supra)* this Court held that when an employee is a workman governed by the [Industrial Disputes Act, 1947](#), it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed.

34. It is of relevance to note that the Act was enacted to provide for the regulation and registration of clinical establishments with a view to prescribe minimum standards of facilities and services. [The Act](#), *inter alia*, stipulates conditions to be satisfied by clinical establishments for registration. However, the Act does not govern contracts of service entered into by the Hospital with respect to its employees. These fall within the ambit of purely private contracts, against which writ jurisdiction cannot lie. The sanctity of this distinction must be preserved."

6. Even otherwise, what is evident from the order of

appointment dated 17.3.2017 is that the petitioner was only appointed as a Professor in Anesthesiology on a consolidated salary. The appointment is purely temporary. For administrative convenience, the charge of HOD was handed over to the petitioner. By the impugned order dated 14.7.2021, what is done is that for administrative reasons the charge is taken over from the petitioner and handed over to one Dr. Bipin Patel.

7. Dr. Thakur in his submission would try and make out a case of stigma as a result of the charge being taken back. If for administrative reason, it is so done, even on the basis of the Gender Harassment Committee's findings, it cannot be faulted on the ground being stigmatic.
8. On perusal of the seniority list of the Gujarat University annexed to reply, even otherwise, what is made out is that Dr. Bipin Patel has a total teaching experience of 39 years and 11 months and as a professor of 20 years and 3 months, whereas, the

petitioner has a total teaching experience of 17 years and 3 months and as a Professor of 4 years and 3 months. Evidently, therefore, Dr. Patel has far more experience and senior to the petitioner and handing over the charge to Dr. Patel cannot be said to be an act of stigma and, therefore, the impugned order cannot be in any manner whatsoever considered to be stigmatic and cannot even be said to be reduction in rank.

9. As far as the prayer of the petitioner to undertake an inquiry on the issues raised in legal notice is not within the purview of this Court in a Writ under Article 226 of the Constitution of India. Therefore, on both these counts, the petition is dismissed. Notice is discharged. No costs.

VATSAL S. KOTECHA

[**BIREN VAISHNAV, J.**]