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In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. Nos.:

Date: 25.10.1991

1. OA-1340/88

Smt. Nirmal Rai

.... Applicant

Versus

Chief Secy., Delhi Admin. Respondents
and Another

2. OA-819/91

Shri Prakash Chand & Ors. Applicants

Versus

Delhi Administration Respondents

For the applicant in 1 above Shri A. Kumar, Counsel

For the applicant in 2 above Shri J.P. Verghese, Counsel

For respondents in 1 & 2 above... Smt. Avnish Ahlawat, Counsel

CORAM: 1. Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

2. Hon'ble B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to
see the judgement? *Y*,

2. To be referred to the Reporter or not? *Y*,

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The questions whether the applications filed by the
employees of the erstwhile Sanatana Dharma Ayurvedic
College, Malka Ganj Chowk, Delhi, are maintainable in
this Tribunal and whether they are entitled to the reliefs
sought by them, are in issue before us. It is proposed to
deal with them in a common order.

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2. The applicant in OA-1340/88 has worked as Laboratory Assistant on ad hoc basis, while the applicants in OA-819/91 have worked as Chowkidar, Sweeper and Clerk, respectively, before they were declared surplus and their services were dispensed with on that ground.

3. The relevant facts leading to the filing of these applications are as follows. The applicants were recruited and appointed to the above mentioned posts by the Management of Sanatan Dharma Ayurvedic College and Hospital which was affiliated to the Examining Body, Delhi Administration for B.A.M.S. since 1977. The said Body was set up under Section 31-A of the East Punjab Ayurvedic and Unani Practitioners Act (Delhi Amendment) Act, 1954 for the purpose of holding qualifying examinations and prescribing the courses of study and training for examinations for Ayurvedic and Unani systems of Medicine. The said College is a private institution run [✓]xxx by a Society.

4. In 1986, there were about 200 students on the rolls of the College. There had been agitations by the students as well as the teachers for increase in the quantum of grant-in-aid to the College, regular pay-scales for the staff, both the teaching and the non-teaching, recognition of the College by the Delhi University and grant of internship allowance for the students of the College. The Delhi

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Administration, therefore, decided at the highest level, to take over the management of the College for a period of 4 or 5 years. In the Memorandum dated 15.10.1986, submitted to the Executive Council on the subject, it was proposed, inter alia, that "the existing staff of the College may be retained by the Delhi Administration and paid the same wages as they were drawing at the time of shifting the College from its original location to Janakpuri."

On the same day, the Executive Council considered the proposal and found the same acceptable in principle.

5. Some employees, including the applicants before us, had filed Civil Writ Petition No.1775/87 in the Delhi High Court praying, inter alia, for restraining the respondents from closing down the said College, for commanding them to perform the statutory duties imposed on them by reason of taking over the Management of the said College and to pay them salary according to the approved U.G.C. scale and to give them all consequential benefits and service conditions of employees. The said petition was dismissed in limine on 3.6.1987 and a review petition filed by the petitioners was also dismissed on 14.8.1987.

6. In view of the above, the respondents have contended that the applications are barred by the principle of constructive res judicata. In our opinion, the point is not so simple and the issues raised in the applications deserve to be considered on the merits. The challenge in the present application is ~~not~~ against the taking over of the Management of the said College.

7. Another objection raised by the respondents regarding the maintainability of the present application is that the applicants are employees of a College under private Management and that they are not employees of the Delhi Administration. This also appears to be an over-simplification.

8. We have gone through the records of the case carefully and have considered the rival contentions. The respondents have stated that the College has been finally closed down after April, 1991 examinations and that the employees of the College have been rendered surplus. The question whether or not the Delhi Administration is bound to protect the interests of the employees who would be rendered surplus, arises for consideration.

9. The fact of the take-over of the Management of the College has not been disputed. The take-over of the Management appears to have been formalised by a Government resolution which is not on record. The contention of the respondents [✓] that they took over the responsibility of of the students only and not the staff, is not convincing. The basic thing in taking over of Management is that the employees of the erstwhile Management cease to be employees of the Management and they become the employees of the authority taking over from the Management which, in the instant case, is the Delhi Administration. Proper management

of the School would not be possible without the assistance of the teaching and non-teaching staff.

10. It cannot be disputed that in the instant case, the Delhi Administration took over the Management of the school in public interest. In the facts and circumstances, it would not be fair and just to terminate the services of the staff on the plea that the college has been closed down after April, 1991 examinations without making a proper scheme for redeploying such surplus staff.

11. In this context, reference may be made to the Redeployment of Surplus Staff in the Central Civil Services and Posts (Supplementary) Rules, 1989 made by the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution (vide Notification dated 31.3.1989, reproduced in 1989 (2) SLJ, Journal Section, pages 22 to 30). The said Rules envisage appointment of a surplus employee against a vacancy in a Central Civil Service. The scheme applies to cases of abolition or winding up of an organisation of the Central Government. Every employee rendered surplus has to be transferred to the surplus staff Establishment and he will be entitled to continue to receive pay and allowances in their previous scale till they are relieved either to join another post or their retirement, resignation, etc., whichever is earlier.

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The question of termination of the services of a surplus employee arises only when he wilfully fails to join the post offered to him by way of alternative placement.

The scheme envisages that, as far as possible, a surplus employee shall, subject to his suitability, be redeployed in a post carrying a pay-scale matching his current pay.

12. The learned counsel for the applicants argued that the provisions of the aforesaid scheme equally apply to the instant case. The respondents have not advanced arguments to counter this and have submitted that the Tribunal has no jurisdiction to entertain the applications for adjudication.

13. In our opinion, as the respondents took over the Management of the College in public interest, the services of the staff affected by the closure of the College should not be terminated, in the interest of justice and fairplay. After the take-over of the Management, the erstwhile staff of the Management of the College becomes the staff of the Delhi Administration, who are bound to provide alternative placement for them in accordance with the aforesaid scheme for redeployment of surplus staff or by formulating a similar scheme to protect the service conditions of such staff.

14. The learned counsel for the respondents drew our attention to judgement dated 17.9.1991 in OA-1028/91

(Kanwar Singh Vs. Delhi Administration and Others) to which both of us are parties. In that case, the applicant who had worked as a daily-wage/casual L.D.C. in the office of Chairman, Examining Body, Delhi Administration, had challenged the termination of his services. The Tribunal held that the Examining Body was a separate legal entity in terms of Section 31A of the East Punjab Ayurvedic and Unani Practitioners Act (Delhi Amendment) Act, 1954 and that the Tribunal had no jurisdiction to adjudicate upon the service matters of employees of such a body or authority. The said decision is clearly distinguishable. The question of taking over of Management of a private institution in public interest and the protection of the employees affected thereby was not in issue in that case.

15. In the light of the foregoing discussion, we over-rule the preliminary objections raised by the respondents as to the maintainability of the present applications. The applications are disposed of with the directions to the respondents to treat the applicants as the employees of the Delhi Administration who have been rendered surplus consequent upon the closure of the Sanatan Dharam Ayurvedic College with effect from April, 1991. The applicants shall be given alternative placement

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in posts in the Delhi Administration commensurate with their qualifications and experience, in accordance with an appropriate scheme to be prepared by them. They would also be entitled to pay and allowances for the period from the take-over of the Management of the said College till they are given alternative jobs and all consequential benefits. The respondents shall comply with the above directions within a period of three months from the date of communication of this order. There will be no order as to costs.

Let a copy of this order be placed in both the case files.

B.N. Dhundiyal
(B.N. Dhundiyal) 25/10/71
Administrative Member

arrvd
25/10/71
(P.K. Kartha)
Vice-Chairman(Judl.)