

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

% Judgment Reserved on : 3<sup>rd</sup> December, 2009  
Judgment delivered on : 10<sup>th</sup> February, 2010

+ **W.P.(C) 3398/2008**

MAJOR MUKUL BAJPAI ..... Petitioner  
Through: Ms.Neena Singh, Advocate

versus

UOI & ORS. .... Respondents  
Through: Ms.Jyoti Singh, Adv. for R-1 to R-3  
Mr.Abhishek Aggarwal and  
Mr.Sanjeev Sahay, Advs.for R-4.

**CORAM:**  
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**  
**HON'BLE MR. JUSTICE SURESH KAIT**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest?Yes

**PRADEEP NANDRAJOG, J.**

1. Under the Armed Forces, "Armed Forces Medical Services" is constituted to provide medical and emergency aid to the members of the Armed Forces.

2. A medical college, "Armed Forces Medical College" at Pune functions as the source of manpower for the Armed Forces Medical Services.

3. The college is affiliated with Maharashtra University of Health Sciences and pertaining to the courses conducted at the college the degree is awarded by the Maharashtra

University of Health Sciences.

4. The petitioner, Major Mukul Bajpai decided to enhance his knowledge by acquiring Post Graduate Degree in Medicine with specialization in Microbiology i.e. MD (Microbiology).

5. He sat in the entrance exam held on 21.01.2007 conducted by the Director General, Armed Forces Medical Services and obtained merit at position No.81. He had the option of opting for various disciplines to acquire a Post Graduate Degree in Masters in Medicine such as Surgery, Anesthesia, Biochemistry, Pathology, Microbiology etc. He opted for the discipline Microbiology. His position in the merit list being senior enough, his option was accepted and accordingly in April, 2007 he joined the Armed Forces Medical College at Pune to undergo the course leading to the Degree of MD (Microbiology). After joining the course and studying for some time, he felt that what was being taught to him related more to Pathology and less to Microbiology. He made queries and learnt that vis-à-vis the syllabus prescribed for Microbiology, the course study imparted at the college was materially different vis-à-vis the subject taught and man hours spent in teaching. He filed an application under the Right to Information Act and addressed the same to the Information

Officer, Maharashtra University of Health Sciences who responded, informing him that if the college imparts education by deviating from the syllabi prescribed by the University, neither the University nor the Medical Council of India would recognize the same.

6. Instant petition was filed praying that a Mandamus be issued to the respondent Nos.1, 2 and 3 i.e. Union of India, Director General of Armed Forces Medical Services and Director General Medical Services (Army) to teach students undergoing the course MD (Microbiology) as per the subjects prescribed by Maharashtra University of Health Sciences. Alternatively, it was prayed that the petitioner be permitted to change his discipline to MS (Surgery) which was available and as per his merit position he was entitled to.

7. The reason why Mandamus prayer was sought for, has been crystallized by the petitioner in the preamble statement of the petition, wherein it has been averred as under:-

*“This is because the Advance Course in Pathology (conducted by AFMC, which is a combination of three different MD subjects) is neither affiliated/recognized by MUHS as well as MCI in current format but individually MD Pathology, MD Microbiology and MD Biochemistry are recognized by MUHS (when conducted separately).”*

8. When the writ petition was filed, Maharashtra University of Health Sciences was not impleaded as a party and the pleadings were directed against the Union of India impleaded as respondent No.1, Director General of Armed Forces Medical Services, impleaded as respondent No.2 and the Director General Medical Services (Army) impleaded as respondent No.3.

9. A consolidated counter affidavit was filed on behalf of the said three respondents giving justification for making adjustments in the course pertaining to MD (Microbiology).

10. It was, however, specifically pleaded that the course contained adequate contents pertaining to microbiology and that the decree awarded to the petitioner would be MD (Microbiology).

11. We note that the respondents No.1 to 3 have been callous in not filing a counter affidavit which takes a consistent stand, for the reason in para 7 of the counter affidavit, we are surprised to note that respondents No.1 to 3 have denied that the petitioner was exclusively deputed for post-graduate course i.e. MD (Microbiology). We fail to understand what is meant by said pleadings of respondents No.1 to 3.

12. We note that during arguments, learned counsel for respondents No.1 to 3 apologized and conceded that the said averments were incorrect and that the petitioner was exclusively undergoing the course in MD (Microbiology).

13. Be that as it may, after the Maharashtra University of Health Sciences was impleaded as a respondent, it filed a counter affidavit as per which it was specifically pleaded by respondent No.4 as under:-

“3. It is humbly submitted that the petitioner was nominated to the Advance Specialist Course in Microbiology but within two months of joining, the said Advance Course was withdrawn and he was put into Advance Specialist Course in Pathology along with others who are similarly placed. However, the petitioner continues to be a student of MD programme in Microbiology of the answering respondent (the affiliating University) and would be entitled to pursue his studies to obtain a degree under this field. Insofar as the answering respondent is concerned, respondent No.2 and respondent No.3 have to conform to one of its recognized MD courses i.e. MD in Microbiology.”

14. While replying to the averments made in para 6 of the writ petition where petitioner averred that post-graduate course i.e. MD in Microbiology conducted by the Armed Forces Medical College, Pune is affiliated to Maharashtra University of Health Science, Nashik, the stand of the University is as under:-

“6. The averments made in para 6 are not admitted except where the same have been specifically admitted and are deemed to have been denied. It is true that the Armed Forces Medical College, Pune is affiliated to the Maharashtra University of Health Sciences, Nashik. The Academic Council of the

answering respondent has granted continuation of affiliation and extension of affiliation to the PG courses (i.e. MD) of Armed Forces Medical College, Pune in the subject of "Microbiology" alongwith other subjects including PG courses in the subjects "Pathology" and "Biochemistry", vide University letter No.MUHS/PG/E 1/1202/342/08 dated 31.03.2008."

15. A perusal of the averments of the University, in para 3 and para 6 of its counter affidavit, are as noted above, brings out that even the university has not taken a very categorical stand. We see no reason why, if the course modified by the college conformed to the studies to be pursued as per the requirement of the University, why could the University not say so in unequivocal terms. We see no reason why the University would plead that as long as the course conducted by the College conformed to one of its recognized MD course, the University had no problem. We see no reason why the University did not specifically deal with the question and give a straight-forward answer after scrutinizing the subjects being taught and as modified by the College.

16. The result thereof is, both parties i.e. the College and the University on the one side and the petitioner on the other side, calling upon the Court to evaluate the courses specified, the duration thereof, the nature and quality of education which could be imparted and return a finding.

17. The area where the parties led the Court, requires expertise for the reason there are large number of overlapping areas in the field of microbiology and pathology. Being not an expert, it would be difficult for the Court to determinatively conclude whether the modified course leans towards the subject of Pathology or Microbiology.

18. During course of hearing of the writ petition, we repeatedly expressed our handicap as aforesaid.

19. At the conclusion of the hearing, learned counsel for respondent No.4 handed over a letter dated 27.11.2009 addressed to her by the Law Officer of the Maharashtra University of Health Sciences. The said letter reads as under:-

“To  
Advocate (Mrs.) Geeta Luthra,  
A-126, NEETI BAGH,  
New Delhi-110 049.

Subject : In the High Court of Delhi at New Delhi  
Writ Petition (C) No.3398/2008 and  
CM No.6518/2008  
Mukul Bajpai V/s  
Govt. of India (MUHS-R-4)

Madam,

A copy of letter No.MR-07635F/MB/PC/2008 dated 09/11/2009 received from Armed Forces Medical College, Pune is forwarded herewith for your further action, please.”

20. Since the letter dated 27.11.2009 refers to a letter dated 9.11.2009 written by the Armed Forces Medical College,

Pune, we required copy thereof to be handed over to us. The said letter reads as under:-

“Maharashtra University of Health Science,  
Nashik

HEARING OF WRIT PETITION (C) NO.3398 OF 2008 IN  
THE HIGH COURT OF NEW DELHI IN RESPECT OF MR-  
07635F MAJ MUKUL BAJPAI

1. Refer to your letter No.MUHG/XPG/X1/22/4337/2009 dated 06 Nov 2009.
2. Copy of letter No.MB/PG/2007-2010 dated 13 Feb 2009 and O/o the DGAFMS letter No.7635F/MB/DGAFMS/DG-1D dated 12 2009 are enclosed herewith for your info.”

21. Since letter dated 9.11.2009 refers to another letter dated 13.2.2009, we had required the same to be filed. The said letter reads as under:-

“DEPARTMENT OF MICROBIOLOGY, AFMC PUNE

FILING OF WP BY MAJ MUKUL BAJPAI  
COMMENTS OF PROFESSOR AND HEAD, DEPARTMENT  
OF MICROBIOLOGY, AFMC PUNE

1. Ref to Min. of Defence, Office of DGAFMS, M Block, New Delhi-110 001, letter No.7635/MB/DGAFMS/DG-1D dt. 12 Feb 2009.
2. Parawise comments of Professor and Head, Department of Microbiology, AFMC Pune are as follows:

Para 3 sub-para (a) referring to Para 3 of counter affidavit by MUHS: Comment of Prof and Head Microbiology, AFMC, Pune:

**It is confirmed that MR 7635F Major Mukul Bajpai is pursuing MD programme in Microbiology under MUHS as per the registration made with MUHS by AFMC, Pune.**



Para 3 subpara (b) referring to **Para 9** of counter affidavit by MUHS: Comment of Prof and Head Microbiology, AFMC, Pune:

**It is confirmed that the contents of the syllabus of Microbiology being followed for Advance course is in consonance with the syllabus prescribed by MUHS based on guidelines of the Medical Council of India. There is no difference between the syllabi.”**

22. In our opinion, letter dated 13.2.2009 concludes the issue that after he successfully completes the course in question at Armed Forces Medical College Pune, the petitioner would be entitled to a degree in MD (Microbiology).

23. We take on record the stand of learned counsel for respondent No.4 that on successful completion of the course as conducted by AFMC Pune, the petitioner would be entitled to the degree in MD in Microbiology.

24. As noted above, learned counsel for the petitioner had argued that a perusal of the modified course shows that the subjects taught are predominantly relating to the field of Pathology and not Microbiology. Two submissions were urged in relation thereto. Firstly, that the course would not be accepted by the University for imparting degree in MD Microbiology, a submission which we have dealt with herein above. The second submission was that even if the petitioner was given a degree in MD (Microbiology), he would be certified as an expert on a subject without having knowledge thereof.

25. It was urged by learned counsel for the petitioner that without having knowledge in the subject of Microbiology, the petitioner would be certified as an expert in Microbiology and if he were to leave the army and join elsewhere his skill in the field of Microbiology would be poor and in this view of the matter the future career of the petitioner would be affected to his prejudice.

26. The aforesaid submission, again requires the Court to act as an expert and determine whether the teaching imparted by the college is so deviated from the field of Microbiology that it can be said with certainty that the person being certified as a Microbiologist is in fact not fit to be certified as a Microbiologist.

27. In other words, within the domain of law what would be required to be considered would be, whether the petitioner is being cheated?

28. Another problem has arisen. The course in MD (Microbiology) is admittedly a two years' course and would be ending in April 2010. Good or bad, the petitioner has undertaken the study for 1 year and 9 months i.e. has already covered 90% of the journey.

29. Assuming if the petitioner is correct, exercising jurisdiction under Article 226 of the Constitution of India, we

may not be able to grant any relief to the petitioner. The reason being the writ would be rendered ineffective as only 3 months of the course are remaining, which period is insufficient for the respondent to impart to the petitioner all the knowledge and skill that would have been imparted to him had he undertaken the full actual course in Microbiology.

30. We note that in the decision reported as AIR 1954 SC 592 K.N.Guruswamy V. The State of Mysore and Ors. the appellant prayed for the issuance of a writ of mandamus to confirm his right to a liquor license for a term commencing in June 1953 and ending in June 1954. Holding that notwithstanding the petitioner having successfully established a right in law, mandamus would not be issued for the reason in May 1954, i.e. the time by which the matter was decided, it was useless to issue directions which would enure only for a month.

31. In various other decisions reported as 1991 (5) SLR 209 Dayal Singh & Ors. V. State of Haryana & Ors., AIR 1952 Orissa 344 Manjula Manjari Dei V. M.C.Pradhan and AIR 1960 Mad 231 B.Radhakrishnan V. State of Madras, the court recognized the entitlement of the petitioner to the issuance of a writ, but denied the same on the grounds that if the writ is issued, larger public interest would suffer or it would amount

to placing intolerable burden of inconvenience on numerous citizens of India and of the adjoining territories.

32. Thus, merely establishing a right may not entitle a party to be granted relief under writ jurisdiction.

33. Noting that the petitioner would be awarded a degree in MD (Microbiology) on his successfully completing the course and holding that the issue of course content called upon by the petitioner to be decided by us would compel the Court to act as an expert in a field of pure academics, we decline to do so leaving it open for the petitioner to seek appropriate remedy as per law if he feels that there is a deficiency in the teaching or the course.

34. The writ petition is dismissed.

35. No costs.

**(PRADEEP NANDRAJOG)  
JUDGE**

**(SURESH KAIT)  
JUDGE**

**FEBRUARY 10, 2010  
'nks' / dkb**