

IN THE HIGH COURT OF DELHI AT NEW DELHI

ORIGINAL WRIT JURISDICTION

WRIT PETITION NO.

OF 2013

IN THE MATTER OF:

Dr. Rani Bhatia

...PETITIONER

VERSUS

St. Stephens Hospital Society and Ors.

...RESPONDENTS

PAPER BOOK

ADVOCATE FOR THE PETITIONER: AMIY SHUKLA

IN THE HIGH COURT OF DELHI AT NEW DELHI

ORIGINAL WRIT JURISDICTION

WRIT PETITION NO.

OF 2013

MEMO OF PARTIES

Dr. Rani Bhatia

Senior Specialist – Psychiatry

B2-2092, Vasant Kunj,

New Delhi-110070

...Petitioner

Versus

1. St. Stephens Hospital Society

A registered Society having its office at

Tis Hazari

New Delhi – 110 054

Through the Director

...Respondent No.1

2. Dr. Sudhir Joseph

Director

St. Stephens Hospital

Tis Hazari

New Delhi – 110 054.

...Respondent No.2

3. Govt of NCT of Delhi

Through its Chief Secretary

Govt. of NCT of Delhi

A-Wing, I.P. Estate,

Delhi Secretariat, Delhi – 110002

...Respondent No.3

4. Union of India

Through its Chief Secretary,
Ministry of Home Affairs,
North Block, Central Secretariat,

New Delhi – 1100 01

...Respondent No.4

FILED BY:

DATE:

Amiy Shukla/Juno Rahman S.

PLACE:

Advocate for the petitioner
576, Masjid Road, Jangpura,
New Delhi: 110014

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FILED BY:

Amiy Shukla/Juno Rahman S.

DATE:

PLACE:

Advocate for the petitioner
576, Masjid Road, Jangpura,
New Delhi: 110014

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NOTICE OF MOTION

Sir,

The enclosed writ petition in the above mentioned matter is being filed on behalf of the Petitioner and is likely to be listed on _____ or any further date thereafter. Please take notice accordingly.

FILED BY:

DATE:

Amiy Shukla/Juno Rahman S.

PLACE:

Advocate for the petitioner

576, Masjid Road, Jangpura,
New Delhi: 110014

Enclosed copy to:

1. St. Stephens Hospital Society
A registered Society having its office at
Tis Hazari
New Delhi – 110 054
Through the Director ...Respondent No.1

2. Dr. Sudhir Joseph
Director
St. Stephens Hospital
Tis Hazari
New Delhi – 110 054. ...Respondent No.2

3. Govt of NCT of Delhi
Through its Chief Secretary
Govt. of NCT of Delhi
A-Wing, I.P. Estate,
Delhi Secretariat, Delhi – 110002 ...Respondent No.3

4. Union of India
Through its Chief Secretary,
Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi – 1100 01 ...Respondent No.4

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URGENT APPLICATION

Sir,

Kindly treat the accompanying petition on an urgent basis. The ground of urgency is that there have been enormous harassment by way of termination and suspension to the petitioner and her colleagues have been done by the management of the respondent hospital and the petitioner will be out of services soon. If the petitioner remains unheard it will be great injustice to them.

This petition, hence, requires urgent attention and directions of the Hon'ble Court.

FILED BY:

DATE:

Amiy Shukla

PLACE:

Advocate for the petitioner
576, Masjid Road, Jangpura,
New Delhi: 110014

SYNOPSIS

1. Petitioner is a senior doctor and a senior employee of the respondent hospital. She has been appointed and confirmed as a senior specialist – Psychiatry. Ever since her confirmation on 1.10.09 she has been functioning as and has been treated by the Director as the Head of the Psychiatry Department. For example, whenever HOD meetings are held she represents the department and has always been treated as HOD even though there is no formal communication to that effect. She has served the hospital for 19 years. Her services have been terminated by the respondent because, according to the respondent, she did not raise adequate money for the hospital. Her answer is simple; she was not required to get involved with the raising of funds because she was not part of the Governing Body and therefore revenue was not part of her duties. She is filing this petition against the respondent for her reinstatement. The respondent is registered under the Societies Registration Act, 1860, and operates, inter alia, a charitable hospital at Delhi.

2. The respondent Society is amenable to writ jurisdiction even though it is a private society because it performs a

public function. It was started as a Christian missionary hospital in 1885 or thereabouts. It continues to be a mission hospital till today. The vision and mission statement of the hospital is as under:

“Vision

St. Stephen’s Hospital, working in the spirit of Christ, is dedicated to the building of a healthy, equitable society, thus contributing to the development of the nation

Mission

St. Stephen’s Hospital is committed to serving all sections of a society in the spirit of Christ, by providing quality, affordable healthcare as well as training healthcare professionals of excellence who would embody the Christian values of selfless service rendered with compassion and love.

The Hospital also has the mandate to undertake medical research towards the improvement of health outcomes.”

3. Petitioner is a permanent employee of the respondent Society. Clause 4 (i) of the St. Stephens Hospital Employee Service Rules is as under:

4 (i) "Permanent' employee is the one who is appointed against a permanent post and has completed the period of probation and has been confirmed in the said post I writing by the Appointing Authority"

4. She is a senior permanent employee. Her appointment letter dated 20.12.08 is annexed hereto as Annexure P-3 and her confirmation letter dated 1.10.09 issued by the respondents is at Annexure P-4 hereto.
5. The abovementioned service rules were not available not at all to the employees of the hospital. They were nowhere displayed and it was not possible to get copies. In fact, even after receiving the termination letter of the respondent's dated 4.9.13 the response to the letter of termination was made by the petitioner without a copy of the service rules. She received a copy when together with the suspension letter dated 14.9.13 of a colleague Dr. Monica Thomas, a copy of the service rules were given two days after the suspension on request by Dr. Thomas. Petitioner states that the said service rules have not been formally and legally adopted by the Governing Body in whom the powers of management of the institution are vested in accordance with clause 3(d) which is as under:

“Governing Body’ means the Governing Body of the St. Stephen’s Hospital Society in which the powers of the management of the Institution is vested”

6. Assuming, without admitting, that the said service rules have been formally adopted by the respondent no. 1 and are legally in force, petitioner impugns clause in the appointment letter dated 20.12.08 which is as under:

“One month’s notice is required for termination of service from either side or one month’s salary in lieu of notice period.”

7. Petitioner also impugns clause 32 of the service rules abovementioned, the relevant part of which is as under:

“32 NOTICE PERIOD FOR LEAVING SERVICE/
TERMINATION

32.1) Except as provided specifically in the letter of appointment/ contract of service, the management may discharge an employee from service or terminate his services by giving notice or after payment of salary/ wages in lieu of the notice as mentioned hereunder:-

32.1) a) For permanent Senior employees-3 months

32.1) b) For Permanent Supervisory Staff-2 months

32.1) c) For other permanent Employees-1 month”

8. These clauses are being impugned as arbitrary, irrational and harsh given the permanent status of employees and as being ultra vires Articles 14 and 19 of the Constitution of India.

9. Assuming for the moment, that the termination has been done simpliciter, it is submitted that the termination is utterly irrational and malafide. The reason given by the Director for the termination of services, is to be found not in the termination letter dated 4.9.13 but in an interview that he gave to News X Channel on 17.9.13 a transcript of which is as under:

“Anchor: The Medical Profession’s biggest secret is out in the open. A leading and reputable charitable hospital, the St Stephen’s hospital has landed itself in a massive row after its director sacked a doctor for allegedly not making enough money for the hospital. The doctor in question, a psychiatrist called Dr. Rani Bhatia had accused the director of St. Stephen’s Hospital of arbitrariness and vendetta. He director has hit back, justifying his

decision, saying the doctor wasn't making enough money for the charity.

Dr. Sudhir Joseph: I just said your salaries are twenty-four lakhs. Twenty-four lakhs, between three people. If twenty-four lakhs is your salary please make at least twenty, eighteen. So, I don't have, you know, this burden on my back.

Dr. Rani Bhatia- My services have been terminated after working for nineteen long years of working for this hospital and I have been told by the director is that the reason for my termination is that my department is not making enough profit to pay for my salary.

Anchor: the sacked doctor has shot off a letter to the Hospital making some serious allegations. Number one, that there was no communication in writing that was issued to her indicating dissatisfaction with her work. Number two, the termination letter issued to Dr Bhatia was vendetta for morally supporting Dr. Monica Thomas who questioned the Hospital's way of functioning in a dignified manner. Number three, another consideration for termination, she says, was her participation in the signature campaign against the hospital's decision to suspend the chief pharmacist in last November.

Sacking raises some very serious questions. Does this case prove that doctors are under pressure to fleece patients to boost profits?

Dr. Puneet Bedi: Well the primary problem is that the Government has almost completely washed

off its hands on public health. To say that Public Health will be looked after by Private sector is to somehow understand that service to the poor will be provided. It is ridiculous. They follow all the principles that other corporates follow.

Anchor: Do hospital routinely fleece patients to boost profits:

Dr Kaul: And I think that is an excellent area to open out for debate. The cost factor, the quality assurances, the direct or indirect pressure on the healthcare delivery personnel which is the doctors is to meet targets which can be financial by and large.

Anchor: Are you being made to undergo unnecessary tests so hospitals can boost their revenue:

Seema Kaul: Shocking admission by hospital administration . Fleece patients, earn money or lost the job. Dr Rani Bhatia's dismissal exposes the ugly face of hospitals, minting money and hiding behind the cover of charity."

10. This interview that the Director gave has been put on a CD and is at Annexure P-9.
11. Similarly, on 23.9.13 in the newspaper The Times of India the Director is quoted as under:

"Dr. Bhatia was working part-time at our hospital for 14 years and she was then asked

to work as full-time consultant. Because the department was not making enough money, we asked her to revert to part-time consultancy under which she would be given a share of the profits earned through patient services and not a fixed salary. She did not agree.”

12. A private body performing a public function is amenable to writ jurisdiction and is required to act fairly. It cannot act arbitrarily. It cannot discriminate. By singling Dr. Rani out for termination of services because she did not raise revenue for the hospital is discrimination against Dr. Rani because the other approximately 40-50 senior doctors and around 1500 regular staff have never been questioned on the raising of the revenue. Moreover, this reasoning has come like a bolt from the blue because Dr. Rani has never been asked and it not on record anywhere that Dr. Rani has been asked to raise revenue for the hospital. Nor is such a requirement in her appointment letter. In the circumstances, her termination is on an account of a reason which is completely outside the terms of her employment.
13. The petitioner, as head of her department is the person primarily responsible to take care of 6000 psychiatrically ill patients a year. These patients are variously chronically

depressed, suicidal or drug addicts suffering as individuals and causing untold pain to families. They are haunted by fear, handicapped with anxiety or tormented by delusions. It is not easy for such patients to switch to another psychiatrist. The doctor patient relationship is very intimate and personal in psychiatry and is not like relationships between patients and other doctors. It will be very difficult if not impossible for these 6000 patients have to look elsewhere. Moreover, the petitioner and the department was providing these services at minimum costs. For example, for a consultation with the petitioner of approximately half an hour the payment required to be made was only Rs. 100. In the private sector such patients would pay about 800 rupees. Many of the 6000 patients would probably discontinue their treatment if the petitioner does not return. The psychiatry department has, apart from the petitioner only a part time psychiatrist who is less senior than the petitioner and is currently on long leave. The termination of services of the petitioner is tantamount to turning away 6000 patients some of whom are seriously ill. This will result in a further downward spiral of deteriorating mental health. There is therefore a strong public interest aspect to this petition.

14. The termination of services is malafide, inter alia, because the real reason lies elsewhere and this reason does not justify even remotely the termination of services. This is to be found in the letter dated 9.9.13 addressed to the respondents by advocate for the petitioner wherein it is stated as under:

“The reason why you have issued this termination letter is to punish and victimize Dr. Bhatia for having given moral support to Dr. Monica Thomas when she was called to your office on 10.7.13 and previous occasions. This summoning was occasioned by Dr. Thomas questioning in a very polite and dignified manner the way in which St. Stephen’s Hospital was going. Once upon a time your institution was a charitable hospital well known throughout the city and country for its free services provided to the poor. St. Stephen’s is the oldest private charitable hospital in Delhi. Its motto, and perhaps it is necessary for me to underline it, is “in love serve one another”. All this seems to be changing under your watch. The ethos of public services is being eroded.

Dr. Monica sought to raise some of these issues as indeed she had every right to do so having served the hospital for about 15 years. She suggested that the hospital ought not to divert critical cases of poor persons to government hospitals. Even the Supreme Court has time and again reiterated that private hospitals are bound to treat serious cases and not fob them off to government hospitals. Dr. Monica also raised the issue of an unsavory character one Mr. Raj who indulged in certain questionable activities giving rise to disquiet within the hospital. My client is not citing details of his activities which apparently had support at the highest level, at this moment but it is sufficient to say that Dr. Monica raised issues of general public health importance in a very dignified manner.

Your response to that was to summarily call her to your office and when she received your summons she informed my client who accompanied her to your office with another colleague Dr. Jamila Koshy. When you saw my client and Dr. Koshy accompanying Dr. Monica

you reacted by directing my client and Dr. Jamila to leave. They left your room but sat outside and this was not your liking at all. It would appear that my client now suffers this termination of services for what was perceived by you as impertinence on her part. She was perfectly within her rights to stand by Dr. Monica. The issues may be debated but the right of a senior doctor to make suggestions for the improvement of the hospital cannot be taken away. It is a doctor's duty to try and improve the hospital as much as possible.

Another consideration which probably figured in the termination of services was the signature campaign against your decision to suspend the Chief Pharmacist sometime in November 2012 where my client's signature figured first on the list of signatories. The Chief pharmacist was subsequently reinstated.

There are many issues, Dr. Joseph, which trouble the doctors and staff of the hospital. St. Stephen's was known for its open and democratic atmosphere of discussions and debates. That is what made this hospital a

great institution. Now things seem to be changing. The raising of issues are not necessarily a reflection of your orientation and performance. My client, as do other doctors, respect your professional capabilities as a surgeon. But they cannot accept that decisions will be taken regarding the general direction in which the hospital will go and patients will be treated without democratic and collective consensus. Surely they will not accept that the voicing of opinions will result in termination of services. You may have the power, but it is the exercise of this power that is now being questioned.

Were it to be such a simple issue that the health of the institution is failing and therefore measures must be taken to revive the hospital's economic health, surely you ought to have taken these senior doctors and staff into confidence as they have many valuable ideas to contribute. Yet you seem to proceed unilaterally taking decisions in respect of the Gurgaon hospital that may perhaps have had some failings. These decisions may have had

severe financial repercussions for the institution as a whole. Other decisions also have been taken that have drained the institution of funds. Your creation of posts and recruitment of staff particularly recently, would run counter to my client's perception that you seem to be justifying the termination of services on the ground that the financial health of the hospital does not permit this position continuing anymore. It is a thin disguise for victimizing my client for standing by Dr. Monika. "

Hereto annexed and marked as Annexure P-6 is a copy of the legal notice sent on 9.9.13 to the respondents.

15. Since, as stated above, the real reason for the termination of the services of the petitioner was the compassion that the petitioner exhibited when she went down to meet the director along with Dr. Thomas, the reason given for termination is arbitrary and malafide.
16. The conduct rules were also not available to any employee and were never displayed. Both the conduct rules and the service rules were tucked away and kept secret. These were also obtained by the petitioner when Dr. Thomas was sent the conduct rules along with the service rules as abovementioned.

17. The other reason why petitioner's services were terminated is also because she broadly agreed with Dr. Monica Thomas's views on St. Stephen being a charitable institution and the need for fair play in running the hospital. True, she was not vocal about her fundamental agreement but the act of going down to the director together with Dr. Thomas was perceived as an act of in subordination. The letter dated 18.9.13 of Dr. Thomas replying to her charge sheet is at Annexure P-10 hereto. This provides a broad and accurate background as to how the ethos and culture at St. Stephens has been changing for the worse. I also annex the letter dated 21.9.13 of Dr. Jacob Pulliyel also a senior employee in response to the charge sheet sent to him. This is at Annexure P-12.
18. Singling out a single senior employee for not raising revenue is malafide and irrational not only because the petitioner was not in a decision making position but also because those who are taking certain poor financial decisions that have resulted in delay in payment of salaries (6 times in 2012-13) postponement of purchase of essential equipment such as bronchoscopes, cardiology instruments, ultrasound machines for the ICU, etc., and an overall sense of despondency among the staff. The shortage of funds if it genuinely exists at all is not because

of any fault of the petitioner but because the present Director took wrong decisions in respect of the hospital that came up in Gurgaon where there was a time overrun of 2 years and a cost escalation of 300%. This decision has turned out to be a huge financial drain. Moreover the hospital is situated in a residential area where there are several limitations of running as a full-fledged hospital.

19. St. Stephens also lost the patronage of CGHS, DGHS and other quasi government institutions leading to a drop in number of patients. The inpatient occupancy this year dropped by 900 patients in one month alone (May 2013) as compared to the last year. Collection of money from the government may be slow but the loss of empanelment causes a negative perception among the public.
20. 9 crores were taken to purchase the Gurgaon land while salaries were paid to senior staff after the 10th of each month for over 6 months.
21. Blanket increase in the retirement age from 60 to 65 inflated the salary bill. An unjustifiable increase in the number of top and middle level administrative positions without a proper selection process and at the directors whims has resulted in a top heavy management contributing to little or nothing to revenue while enjoying comfortable salaries. A comparison of the work that they

do with the petitioner who treats nearly 6000 patients a year will show that the workload of the petitioner is probably more than the workload of the newly appointed senior administrators put together. In the previous regimes the director and his deputies did clinical work as well as administrative work and brought in revenue whereas now the administrative department is a drain on the budget.

LIST OF DATES AND EVENTS

Date	Particulars
	Conduct Rules of the St. Stephen's Hospital framed.
01.04.2001	St. Stephen's Hospital Employees Service Rules.
20.12.2008	The petitioner received her appointment letter which was effective from 01.10.2008 from the respondent.
01.10.2009	The petitioner received a confirmation as Senior Specialist Psychiatry Dept. from the respondents.
04.09.2013	The respondents terminated the petitioner and gave the termination letter with immediate effect.
09.09.2013	The petitioner after receiving her termination letter sent a reply for the same through a

	legal notice to the respondents. No response to this reply have been received.
14.09.2013	Dr. Monica Thomas, a colleague and friend of the petitioner received her letter of suspension from the respondents.
16.09.2013	The Charge sheet was filed and sent to Dr. Monica Thomas.
17.09.2013	There was an interview of Respondent No. 2 wherein he made a statement and gave the reason for termination which was aired by News X Channel in their prime time debate on 'Profit over Patients'.
18.09.2013	The reply to the charge sheet was filed by Dr. Monica Thomas. No response to this reply has been made by the respondents.
18.09.2013	Dr, Jacob Puliyeel, another colleague of the petitioner received his charge sheet from the hospital.
21.09.2013	Dr. Jacob Puliyeel sent his response to the charge sheet sent to him by the respondents. Again no reply by the respondents have been received.
	Hence this petition

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IN THE MATTER OF:

Dr. Rani Bhatia

...PETITIONER

VERSUS

St. Stephens Hospital Society and Ors.

...RESPONDENTS

WRIT PETITION FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA SEEKING A WRIT OF MANDAMUS
OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTIONS
TO THE RESPONDENTS AS THERE WAS A CLEAR VIOLATION OF
ARTICLES 14 AND 19 OF THE CONSTITUTION.

TO

THE HON'BLE THE CHIEF JUSTICE
AND HIS OTHERCOMPANION JUDGES
OF THE HON'BLE HIGH COURT OF DELHI

THE HUMBLE PETITION OF THE
APPLICATION ABOVE NAMED

Most respectfully showeth that:

1. The present petition is being filed in order to challenge the unfair and arbitrary manner in which the respondents have terminated the petitioner from her services.

1A That the petitioner has not approached the concern authority for the same relief in this Hon'ble Court or any other Court.

2. Petitioner is a senior doctor and a senior employee of the respondent hospital. She has been appointed and confirmed as a senior specialist – Psychiatry. Ever since her confirmation on 1.10.09 she has been functioning as and has been treated by the Director as the Head of the Psychiatry Department. For example, whenever HOD meetings are held she represents the department and has always been treated as HOD even though there is no formal communication to that effect. She has served the hospital for 19 years. Her services have been terminated by the respondent because, according to the respondent, she did not raise adequate money for the hospital. Her answer is simple; she was not required to get involved with the raising of funds because she was not part of the Governing Body and therefore revenue was not part of her duties. She is filing this petition against the respondent for her reinstatement. The respondent is registered under the Societies Registration Act, 1860, and operates, inter alia, a charitable hospital at Delhi.

3. The respondent No. 1, St. Stephen's Hospital Society is oldest and one of the largest private Hospitals in Delhi.

Established in 1885 is amenable to writ jurisdiction even though it is a private society because it performs a public function. It was started as a Christian missionary hospital in 1885 or thereabouts. It continues to be a mission hospital till today.

4. The Respondent No. 2 is the Director of the prestigious St. Stephen Hospital. He is responsible for all the decision taken by the management of the Respondent No. 1.

BRIEF FACTS

1. The St. Stephens hospital was established way back in 1885. They have a very clear vision to serving all sections of society in the spirit of Christ, by providing quality, affordable healthcare as well as training healthcare professionals of excellence who would embody the Christian values of selfless service rendered with compassion and love. The Hospital also has the mandate to undertake medical research towards the improvement of health outcomes.
2. St. Stephens Hospital was the first hospital established in Delhi. It was originally a mother and child hospital. In 1975 it became a general hospital. It is supervised and monitored and authorized in accordance with the provisions of the Delhi Hospital and Nursing Homes Act. In accordance with this Act it is granted annual certification from the Directorate of

Health Services, Delhi Government. The hospital obtained the grant from the Federal Republic of Germany in 1975 or thereabouts, a grant from the British Government (DFID) in 1990 and by the British Government (ODA) and all these grants were given in writing as the correspondence will show when produced, for a hospital that would be primarily for the poor and deprived sections of the population of Delhi and thereabouts for community outreach and other programs and the correspondence will also show that only 30% or so of the beds were meant for private patients. The hospital had a charitable status right from its inception. The Delhi Administration/Union of India gave the hospital 3 acres of land either free or on nominal cost basis on the understanding that the hospital would continue catering primarily for the poor and this will be revealed from the surrounding correspondence concerning the land. The respondents went back on all the assurances given to the Delhi Government/Union of India and the abovementioned donors and acted totally against the ethos and culture and the mission and vision of the hospital and began to slowly discontinue the services for the poorer sections. The Income Tax Department withdrew the charitable status of the hospital. The respondents challenged this decision before the Income Tax Tribunal. They succeeded and the department filed an Appeal in the High Court which is apparently pending.

It is therefore in the interest of justice as well as in the interest of the poor and the general public that the respondents be directed to produce the entire records of the hospital and to hold the hospital to its original assurances and promises made in writing and otherwise to provide extensive services to the poor.

3. The hospital also has certain conduct rules which are to be followed by all the staff and management of the hospital. The true copy of these conducts rules are marked hereto and annexed as **Annexure P-1**.
4. Also, the hospital has made certain Service Rules, by way of St. Stephen's Hospital Employees Service Rules in 01.04.2004. These rules are framed to follow service rules and regulations by the staff and management. The true copy of the service rules are marked hereto and annexed as **Annexure P-2**.
5. The petitioner joined the hospital in April 1994 as a part time psychiatrist. And she was given her appointment letter as senior specialist psychiatry on probation on 20.12.2008 which was effective from 01.10.2008. True copy of the petitioner's appointment letter which was given on 20.12.2008 from the respondent is marked hereto and annexed as **Annexure P-3**.
6. The petitioner got her confirmation letter on 01.10.2009 as a Senior Specialist Psychiatry Dept. The true copy of the

petitioner's confirmation letter dated 1.10.2009 as Senior Specialist Psychiatry Dept. from the respondents is marked hereto and annexed as **Annexure P-4.**

7. The petitioner after working and serving for 19 years in the hospital gets a termination letter dated 04.09.2013 from the management with the reason that her department is not making profit to the respondents. The true copy of the termination letter of the petitioner dated 04.09.2013 is marked hereto and annexed as **Annexure P-5.**

8. After receiving her termination letter, the petitioner approached her lawyer and by way of legal notice dated 09.09.2013, she sent a reply to her termination by the respondent no. 1 hospital. The true copy of the legal notice dated 09.09.2013 sent by the petitioner is marked hereto and annexed as **Annexure P-6.**

9. While the process of termination wasn't even completed for the petitioner, another colleague and a friend of the petitioner working in the same hospital, Dr. Monica Thomas received her suspension letter dated 14.09.2013. The true copy of this letter has been marked hereto and annexed as **Annexure P-7.**

10. After receiving the suspension letter from the hospital, Dr. Monica Thomas received her charge sheet dated 16.09.2013.

The true copy of this charge sheet is been marked hereto and annexed as **Annexure P-8**.

11. In the meanwhile, there was an interview taken by NEWS X Channel in their prime time which showed a debate on 'Profit over Patients' wherein he gave the reason for petitioner's termination as under:

"Dr. Sudhir Joseph: I just said your salaries are twenty-four lakhs. Twenty-four lakhs, between three people. If twenty-four lakhs is your salary please make at least twenty, eighteen. So, I don't have, you know, this burden on my back.

This program was later put on the electronic media and a CD was made. This CD of the program on 17.09.2013 is marked hereto and annexed as **Annexure P-9(i)** and the transcript of the content in the CD is marked hereto and annexed as **Annexure P-9 (ii)**.

12. Thereafter, Dr. Monica Thomas sent a reply dated 18.09.2013 to the charge sheet which was filed against her. The true copy of this reply by Dr. Monica Thomas is marked hereto and annexed as **Annexure P-10**.
13. With utmost shock to the petitioner, another colleague and a friend of her, Dr. Jacob Puliyeel, received a charge sheet dated

18.09.2013 against him. This charge sheet dated 18.09.2013 is been marked hereto and annexed as **Annexure P-11.**

14. Dr. Jacob Puliyeel sent a reply dated 21.09.2013, for the charge sheet which was sent to him by the respondent hospital. The true copy of this reply has been marked hereto and annexed as **Annexure P-12.**

15. Thereafter once again Respondent No. 2 gave a statement in Times of India on 23.09.2013 expressly quoting as under:

“Dr. Bhatia was working part-time at our hospital for 14 years and she was then asked to work as full-time consultant. Because the department was not marking enough money, we asked her to revert to part-time consultancy under which she would be given a share of the profits earned through patient services and not a fixed salary. She did not agree.”

The true copy of the newspaper report has been marked hereto and annexed as **Annexure P-13.**

GROUND

In view of the above, petitioner impugns the decision of the respondents to terminate her services on the following grounds which are in addition to the grounds set out in the petition:

- A. That the termination of the services is arbitrary, harsh and discriminatory and in violation of Articles 14 and 19 of the Constitution inasmuch as Article 14 is attracted as the respondents have acted unfairly and irrationally and 19 is attracted because the respondents have acted to unlawfully stifle freedom of speech and expression by preventing a polite and rational discussion of the direction in which St. Stephens hospital was going.
- B. That the respondents though being a private party were performing an important public function and were therefore amenable to writ jurisdiction and this court has jurisdiction under Article 226 of the Constitution to entertain this petition and to make appropriate orders as prayed for.
- C. That the reasons stated by the respondents as set out in the petition namely, that the petitioner has not generated revenue is arbitrary and irrational for the reasons set out in the petition.
- D. That the petitioner has been discriminated against is clear from the fact that while she is the only person out of 40 senior staff at the hospital whose services have been terminated for not raising revenue, other departments similarly situated as stated in the

petition have not come under scrutiny and surplus additional staff have been recruited thus belying the stand of the respondents that staff cannot be retained because of the financial situation.

E. The clause in the appointment letter of the petitioner authorizing termination of services simplicitor on one month's notice and clause 32 of the service rules are ultra vires Article 14 of the Constitution of India and are arbitrary, harsh and discriminatory and contrary to the decision of the Supreme Court in Central Inland Water Transport Corporation Ltd. & Anr v. Brojo Nath Ganguly & Anr. Reported in 1986 (3) SCC 156 and deserves to be quashed.

F. The actions of the respondents are malafide inasmuch as the reasons given in the media and recorded as stated in the petition do not justify termination of services at all. It is also malafide because the freedom of speech and expression enshrined in Article 19 1(a) of the Constitution are sought to be restricted and curtailed as stated in the petition.

G. The rules impugned in this petition which authorize termination of services by mere giving of a notice and without conducting an inquiry and hearing the

other side is in breach of the principles of natural justice and is, in any case, unconscionable and void. Such a clause is vitiated by undue influences because between the petitioner and the governing body there existed a relationship where the governing body was in a position to dominate the will of others and used that position to obtain an unfair advantage not only over the petitioner but over all other employees. The impugned clauses are therefore hit by section 23 and 24 of the Indian Contract Act as such clauses are opposed to public policy and the object of such clauses is to keep the employee in a permanent state of fear of the governing body and the director so that even the exercise of free speech is self restricted due to a perception that the director may not agree and hence terminate the services. These clauses are therefore violative of 19 1(a) of the Constitution and only serve to prevent employees from speaking their minds and stating their views in a democratic manner.

H. The rules according to which services can be terminated on issuing of notice of one month is arbitrary inasmuch as the employee will never know the reason for the termination of services, will not be

given an opportunity to improve in the case of those employees who are capable of improvement if informed in time and such a provision also leaves it open for the employer to act in an utterly vindictive manner against employees who have put in long years of service and then disguise the real reason through an innocuous order, permitting unfettered and unguided power to be exercised by the management. Such an exercise of power is not consistent with a body exercising a public function and therefore being akin to a state or governmental body.

I. BECAUSE the petitioner being a full time permanent employee who is not permitted to do work elsewhere is entitled to reasons for termination of services and if these are not being given, the termination of services becomes illegal.

J. That the respondent Society performs a public function, inter alia because it provides reasonably price and professional services to the poor including a large number of slum dwellers in the Sundar Nagari Area. Also a large number of destitute and migrant workers who do not have medical insurances or any government incentives. Many of these poor persons

come from states surrounding Delhi as far as from South Delhi or trans Yamuna area and are from cluster population. Thus though there are many hospitals providing professional services in Delhi. These are highly priced and not affordable. St. Stephens Hospital performs a public service to that section of the population which is not capable of making such payments. Even the public hospitals are over booked and in many cases do not have the expertise and do not provide the services that St. Stephan does with its multiple specialities e.g. Hindu Rao Hospital does not have a neurologist. The public hospitals are overcrowded, lac facilities and instrumentation are often missing. They are perceived as not patient friendly hence St. Stephan Hospital has historically played a critical public function in the spectrum of health services being provided to the poor in Delhi.

K. Because the termination of services is void, because under the rules, show cause notice should have been given and an enquiry should have been conducted but this was not done.

Case Law

22. In Central England Water Transport Corporation Vs. Brojo Nath Ganguly (1986 3 SCC 156) where a rule was challenged which authorize the Corporation to terminate the services of a permanent employee by giving 3 months notice, the Supreme Court held as under:

“100. A clause such as Rule 9(i) in a contract of employment affecting large sections of the public is harmful and injurious to the public interest for it tends to create a sense of insecurity in the minds of those to whom it applies and consequently it is against public good. Such a clause, therefore, is opposed to public policy and being opposed to public policy it is void under section 23 of the Indian Contract Act”

23. In Zee Telefilms Ltd. Vs. Union of India (2005 4 SCC 649) in respect of the BCCI which was a private body performing a public function the Constitution Bench of the Supreme Court held as under:

“33. Thus it is clear that when a private body exercises its public functions even if it is not a state, the aggrieved person has a remedy not only under the ordinary law but also under the

constitution, by way of a writ petition under Article 226.”

PRAYER

24. Petitioner therefore prays
- a. For a writ of certiorari or any other appropriate writ, order or direction quashing the termination of services letter dated 4.9.13 of the respondents;
 - b. For an order quashing the clause in the appointment letter of the petitioner dated 20.12.08 authorising termination of services simplicitor on one month’s notice as well as clause 32.1, 32. (1) (a) – 32 (1) (c) of the St. Stephens Hospital Employees Service Rules as being ultra vires of Article 14 and 19(1)a of Constitution of India.
 - c. For an order directing the respondents to reinstate the petitioner with full back salary and all benefits from the date of termination of services;
 - d. In the alternative and only in the circumstances where relief clause (c) cannot be granted for an order directing the respondents to pay substantial compensation as determined by this Court to the petitioner.

e. For an order directing the respondents to produce the entire records of the hospital relating to the grants provided by the Federal Republic of Germany, the British Government, DFID and ODA and after going through the same to direct the respondents to ensure that the poor and deprived sections of the population receive and continue to receive extensive services and free or subsidized treatment at St. Stephens.

f. For an order directing the respondents to produce the entire records relating to the grant of land by the respondents 3/4 to the respondent no. 1 and after going through the same to direct the respondents 1 and 2 to ensure that the poor and deprived sections of the population receive and continue to receive extensive services and free or subsidized treatment at St. Stephens.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY:

DATE:

Amiy Shukla/Juno Rahman S.

PLACE:

Advocate for the petitioner
576, Masjid Road, Jangpura,
New Delhi: 110014