

Constitutional Writ  
Present:  
The Hon'ble Justice S.P. Talukdar  
A.S.T.No.168 of 2009  
Dr. Ananta Kumar Das  
Vs.  
Principal, Vijaygarh Jyotish Ray College & Ors.  
Judgment on: 24.02.2010

**Point:**

**LEGITIMATE EXPECTATION:** An expectation, whose fulfillment requires that a decision-maker should make an unlawful decision- whether be a legitimate expectation – Service Law

**Fact:** The petitioner was appointed as a Lecturer in Botany in 1987 in respondent College. Subsequently, in 2005 the Principal of the said College informed the petitioner he was to act as the Head of the Department of Microbiology. However, in the year 2009 the petitioner was reverted to the Department of Botany. By filing the instant writ application, the petitioner has challenged the said reversion claiming that in view of his long association and contribution in the Department of Microbiology, it will not be just and proper on the part of the respondents to shift him back to the Department of Botany.

**Held:**

An expectation, whose fulfillment requires that a decision-maker should make an unlawful decision, cannot be a legitimate expectation. It is inherent in many of the decisions on substantive legitimate expectations, and express in several, that the expectation must be within the powers of the decision-maker. Paragraph – 17

It is well settled that judicial review provides the means by which judicial control of administrative action is exercised. The subject matter of every judicial review is a decision made by some person (or body of persons) other than the decision-maker, although it may affect him too. It must affect such other person either:

- (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or
- (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.

In Blacks Law Dictionary the word 'legitimate' has been defined as:

- (1) Complying with the law; lawful, (2) to genuine; valid...

Paragraph – 18

Sir Edward Coke claimed that “reason is the life of the law, nay the common law itself is nothing else but reason.” The law is not an exact science as judicially acknowledged. It would be a strange science if it is decided upon precedents only. No doubt, precedents serve to illustrate principles and to give them certainty. But such principles are to be applied in after due regard to the facts and circumstances of each case.

Paragraph – 20

**Cases:**

Confederation of Ex-servicemen Associations & Ors. vs. Union of India & Ors., as reported in (2006) 8 SCC 399

M.P. Oil Extraction & Another vs. State of M.P & Ors., as reported in (1997) 7 SCC 592 Maclay vs. Dixon., reported All England Law Reports Annotated Vol. I, page 22, (January 8, 1944),

Anita Karmokar & Anr. vs. Birendra Chandra Karmokar., as reported in 65 CWN 786. Navjyoti

Coop. Group Housing Society & Ors. vs. Union of India & Ors., as reported in (1992) 4 SCC 477,

Punjab Communications Ltd vs. Union of India & Ors., as reported in (1999) 4 SCC 727, Pune & Anr. vs. Bharat Forge Co. Ltd. & Ors., as reported in (1995) 3 SCC 434.

Jalandhar Improvement Trust vs. Sampuran Singh reported in 1999 (4) Supreme 270,

Dr. Ashok Kumar Maheswari vs. State of U.P. & Anr., 1998(2) Supreme 100,

Union of India & Anr. vs. International Trading Co. & Anr., as reported in 2003 (4) Supreme 114,

Secretary, State of Karnataka & Ors. vs. Umadevi & Ors., as reported in 2006 (3) Supreme 415.

Hira Tikkoo vs. Union Territory, Chandigarh & Ors., as reported in 2004 (3) Supreme 690.

Lord Halsbury in Quinn v. Leathem, (1901) AC 459

For the Petitioner: Mr. Gopal Chandra Ghosh  
Mr. Om Narayan Rai.

For the Respondent Nos.1 to 3: Mr. Sumit Kumar Panja  
Mr. Amal Krishna Saha.

For the State-Respondents: Mr. Ashim Kumar Halder.

**The Court: 1.** Alleging inaction and indifference on the part of the respondent-authorities and seeking direction upon them to allow the petitioner to continue in the Department of Microbiology as a faculty thereof, the petitioner approached this court with an application under Article 226 of the Constitution. Grievance of the petitioner relates to alleged consistent indifference on the part of the State-respondents in appreciating the educational background and experience of the writ petitioner.

2. The petitioner was appointed as a Lecturer in Botany as far back as in 1987. He holds the degree of Doctor of Philosophy (Science) in Botany. A proposal was initiated for having a Microbiology department in the college. Inspection was held on 19<sup>th</sup> May, 2000. The Inspection Team recommended that the college be granted extension of affiliation of Microbiology (General and Honours) provisionally for three (3) years with effect from the 2000-2001 subject to fulfilment of certain conditions. The Governing Body of the college resolved to allow the petitioner to continue as Head of the Department of Microbiology. Steps were also directed to be initiated for his re-designation. The Principal of the respondent-college requested the petitioner to act as the In-charge of Microbiology Department. On 31<sup>st</sup> August, 2001, the Principal requested the Director of Public Instruction to convert the post of Lecturer in Botany to that of Microbiology and re-designate the petitioner accordingly. Strong recommendation was made by the Principal in favour of the petitioner. On 11<sup>th</sup> September, 2009, the Principal again wrote to the Director of Public Instruction wherein emphasis was laid on the indispensable contribution made by the petitioner. On 18<sup>th</sup> September, 2002, the Joint Secretary, Government of West Bengal wrote to the D.P.I. intimating thereby that conversion of the petitioner's post cannot be done. On 27<sup>th</sup> November, 2002, the Principal again wrote to the D.P.I. wherein the valuable contribution of the petitioner was once again highlighted. On 21<sup>st</sup> December, 2004, the petitioner made a representation

before the Respondents/Principal ventilating his grievance and urging implementation of certain works relating to the department of Microbiology. On 17<sup>th</sup> March, 2005, a Government Order was issued sanctioning two posts of permanent lecturers in Microbiology. The petitioner accordingly approached the Principal for inducting him in one of the said two posts. This was again forwarded to the D.P.I. with the request to re-designate the petitioner in one of the sanctioned posts. The Principal asked the petitioner for certain information and sought for his valuable comments regarding M.Sc. (P.G.) Microbiology. The petitioner responded to the said request. He was invited to attend the Governing Body meeting on 15<sup>th</sup> July, 2005 as 'Invitee'. The Principal informed the petitioner that as per the resolution taken in the G.B. Meeting held on 15<sup>th</sup> July, 2005, the petitioner was to act as In-charge of P.G. Course in Microbiology along with undergraduate Course and to act as the Head of the Department of Microbiology. There was again a further round of representation submitted by the petitioner and further recommendation made by the Principal in regard to re-designation. On 17<sup>th</sup> April, 2006, the D.P.I. issued Memo No.638-UGC/4P-259UGC/99(Pt-3) saying that the proposal for re-designation was under consideration. On 6<sup>th</sup> July, 2006, the Principal took out notice undermining the petitioner's position as Head of the Department of Microbiology. In Academic Sub-committee's meeting on 01.08.2006 and 21.11.2006, the Principal started proclaiming himself to be the Head of the Department of Microbiology. The petitioner again submitted a representation even before the Vice-Chancellor, Academic, Calcutta University. On 12<sup>th</sup> February, 2007, D.P.I., issuing a Memo asked the Principal to submit certain documents. On 23<sup>rd</sup> April, 2007 another representation was submitted by the petitioner. But on 22<sup>nd</sup> of September, 2007, an advertisement was published inviting candidates for interview for the post of Lecturer in Microbiology and this was done by the Principal without even consulting the petitioner. On 17<sup>th</sup> February, 2009, the petitioner was served with a letter dated 14<sup>th</sup> February, 2009 thereby

reverting him to the Department of Botany. On 18<sup>th</sup> February, 2009, the petitioner made a representation against such decision of reversion as per letter dated 14<sup>th</sup> February, 2009. On 27<sup>th</sup> February, 2009, the petitioner was served with another letter dated 23<sup>rd</sup> February, 2009 issued by the Principal asking the petitioner to join in the Department of Botany first without considering his representation. The petitioner claimed that in view of his long association in the Department of Microbiology and his contribution in the said department, it will not be just and proper on the part of the respondent-authorities to shift him back to the Department of Botany and that too, just two years prior to his retirement.

Respondent Nos. 1 to 3 contested the case by filing Affidavit-in-Opposition – thereby denying, inter alia, all the material allegations made by the petitioner. It was emphatically mentioned that the petitioner's prayer purely based on legitimate expectation does not deserve to be entertained and dismissal of the application was so prayed for.

3. The crux of the controversy in this case is how far a claim on the basis of legitimate expectation can be entertained. Mr. Rai appearing as learned Counsel for the petitioner, while assisting his senior Mr. Ghosh, submitted that the petitioner had not sought for any appointment but he had approached this court with the prayer for conversion. He submitted that there could be no reason for standing in the way since such conversion had been allowed in some other matters. It was further contended that there had been no delay on his part in knocking the doors of the court.

4. Admittedly, the petitioner was appointed as Lecturer in Botany on 10<sup>th</sup> August, 1987, on the recommendation of the College Service Commission (Annexure P-1). It was claimed that with the hard work and untiring efforts of the petitioner, the Department of Microbiology was set up in the respondent-college. An Inspection Team visited the college on 19<sup>th</sup> May, 2000. While seeking extension of affiliation in Microbiology (General & Honours), the petitioner, Dr. Ananta Kumar

Das, was recognized as a teacher in Microbiology and not Botany. It was commented that one full time teacher from the Botany Department who has experience in Microbiology teaching and research to be allowed to the Microbiology Section for making necessary arrangement and starting the department. Mr. Rai submitted that the resolution of the General Body Meeting dated 12<sup>th</sup> September, 2000 virtually approved continuation of the petitioner as the Head of the Department of Microbiology. It was only on 14<sup>th</sup> February, 2009 (Annexure P-36) that the term “temporary charges” was first introduced by the College- Authorities. Referring to Annexure P-15 at page 62 of the writ application, it was submitted on behalf of the petitioner that it would reflect appreciation of the petitioner’s contribution made by the respondent No.1, the Principal and the petitioner was requested to take steps for introduction of M.Sc. Course in Microbiology. From the hand-written note of the petitioner in such document, being Annexure P-15, it could be seen that the petitioner was reluctant to take additional responsibilities regarding Microbiology Course. This is further reflected in the documents being Annexure P-16 & P-17. The Governing Body in its meeting dated 15<sup>th</sup> July, 2005 resolved, as revealed from Annexure P-22, that the petitioner “be entrusted to look after the Post Graduate Section of the Department of Microbiology along with Head of the Department function of Undergraduate Section of the Department of Microbiology.” In the same resolution, the Principal was requested to take up the matter with the Education Department regarding re-designating Dr. Ananta Kumar Das from Reader in Botany to Reader in Microbiology against the newly created sanctioned post of Microbiology Department. According to learned Counsel for the petitioner, the entire situation is required to be analyzed in the context of such consistent reluctance on the part of the petitioner and the conduct on the part of the respondent-college authorities. Referring to the letter of the Director of Public Instruction dated 15<sup>th</sup> January, 2009, it was submitted that it was bad in law inasmuch as it was premature. By the said

letter, the Director of Public Instruction communicated the college authorities that the proposal for conversion is not acceptable as per relevant government order of Higher Education Dept. vide Memo No.1174-Edn.(CS) dated 18.9.2002. Learned Counsel for the petitioner sought to assail the said communication further on the ground that there had been no re-consideration of the proposal.

5. It was submitted that the proposal for reconsideration for re-designation of the petitioner from the post of Reader in Botany to Reader in Microbiology, which was sent to the Higher Education Dept. for reconsideration, was still awaiting decision. It was contended by Mr. Rai that such letter speaks that the proposal for conversion of the petitioner's post (Reader in Botany to Reader in Microbiology) had not been accepted in view of G.O. No.1174/Edn. (CS) dated 18<sup>th</sup> September, 2002 of the Higher Education Dept. meaning thereby that the D.P.I. issued the letter on the basis of G.O. dated 18<sup>th</sup> September, 2002. The matter thus could very well be presumed to be under reconsideration. It was submitted that the petitioner was asked to continue for more than eight and half years as teacher of Microbiology and this was allowed taking into consideration his qualification and experience. Thus, it was his legitimate expectation to continue further in the said post. On behalf of the petitioner, it was then submitted that the respondent-authorities had all along assured the petitioner that he would be absorbed in the Department of Microbiology.

6. Relying upon the decision of the Apex Court in the case between Confederation of Ex-servicemen Associations & Ors. vs. Union of India & Ors., as reported in (2006) 8 SCC 399, it was submitted by Mr. Rai that the court may not in all cases insist an administrative authority to act judicially but may still insist it to act fairly. It was held:

“The doctrine of legitimate expectation is the ‘latest recruit’ to a long list of concepts fashioned by the courts for review of administrative actions. No doubt, the doctrine has an important place in the development of administrative law and particularly law relating to ‘judicial



review'. Under the said doctrine, a person may have reasonable or legitimate expectation of being treated in a certain way by an administrative authority even though he has no right in law to receive the benefit." It was further held:

“ The doctrine is based on the principle that good administrative demands observance of reasonableness and where it had adopted a particular practice for a long time even in the absence of a provision of law, it should adhere to such practice without depriving its citizens of the benefit enjoyed or privilege exercised.”

In *M.P. Oil Extraction & Another vs. State of M.P & Ors.*, as reported in (1997) 7 SCC 592, it was held that the doctrine of “legitimate expectation” has been judicially recognized by the Supreme Court. The doctrine of “legitimate expectation” operates in the domain of public law and in an appropriate case, constitutes a substantive and enforceable right. Deriving inspiration from English decision in the case between *Maclay vs. Dixon.*, as reported All England Law Reports Annotated Vol. I, page 22, (January 8, 1944), it was submitted that where a statute does not make an act illegal, no objection can be taken if the parties so arrange their affairs that the restrictions imposed by the statute are avoided.

Regarding applicability of the decision, Mr. Rai referred to a Single Bench decision of this court in the case between *Anita Karmokar & Anr. vs. Birendra Chandra Karmokar.*, as reported in 65 CWN 786. The learned Court observed:

“I do not find anything wrong in the absence of statutory provision in importing the English rules of practice, if they are rules of justice, equity and good conscience, if they fit in with Indian conditions and if they do not defeat the very purposes of the Act, for the administration of which those principles may have to be imported.”

In *Navjyoti Coop. Group Housing Society & Ors. vs. Union of India & Ors.*, as reported in (1992) 4 SCC 477, the Apex Court held that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Referring to the decision in the *Punjab Communications Ltd vs. Union of India & Ors.*, as reported in (1999) 4 SCC 727, it was submitted that even change in policy defeating the substantive legitimate expectation must satisfy the test of *Wednesbury* reasonableness. Such changed decision has to pass the test of judicial scrutiny. It cannot be irrational or perverse.

It was submitted that in absence of any prohibition, the petitioner could very well legitimately expect to continue teaching Microbiology.

Mr. Rai submitted that the letters from the Higher Education Dept. and from the Director of Public Instruction did not speak about any reversion of the petitioner to the Department of Botany. Despite the earlier Memo No.1174-Edn. (C.S.) dated 18<sup>th</sup> September, 2002 issued by the Higher Education Dept., the college-authorities allowed the petitioner to continue teaching Microbiology. Mr. Rai in this context referred to the doctrine of desuetude. Reference was made to the following observation of the Apex Court in the case between *Municipal Corporation for City of Pune & Anr. vs. Bharat Forge Co. Ltd. & Ors.*, as reported in (1995) 3 SCC 434.

The same reads:

“Though in India the doctrine of desuetude does not appear to have been used so far to hold that any statute has stood repealed because of this process, we find no objection in principle to apply this doctrine to our statutes as well. This is for the reason that a citizen should know whether, despite a statute having been in disuse for long duration and instead a contrary practice

being in use, he is still required to act as per the 'dead letter'. We would think it would advance the cause of justice to accept the application of doctrine of desuetude in our country also..."

7. It was then submitted that reversion of the petitioner to the Department of Botany after such a long period would not certainly promote the interest of the student nor it would be in the interest of the petitioner. During this protracted period, the petitioner had been associated with the Department of Microbiology. The petitioner could not be expected to be in touch with the changes and developments in the subject of Botany throughout this long period and his reversion back to the said department will naturally be a difficult proposition. Mr. Rai referring to the stand of the respondent-authorities, as reflected in the Affidavit-in-Opposition, submitted that there is requirement of 9 (nine) faculties for simultaneous operation of both P.G. & U.G. Courses and there are only 5 (five) full time permanent teachers including the petitioner. The petitioner, thus, can very well be accommodated in the scheme of things.

8. On the other hand, Mr. Panja appearing as learned Counsel for the respondent Nos. 1 to 3 submitted that the petitioner had accepted the Inspection Report in connection with the inspection held on 19.5.2000. The said report indicates that a full time teacher from the Botany Dept. who has experience in Microbiology teaching and research was to be allotted to the Microbiology Section to make necessary arrangement for starting the department. He further submitted that Annexure P-12 at page 58 categorically reflects rejection of the proposal for conversion of the petitioner's assignment from the Department of Botany to Department of Microbiology. It cannot be said that the petitioner did not accept the said proposal. Mere fact that there was no change in the operational style or functional manner could not by itself result in any change in complexion. By further communication dated 15<sup>th</sup> January, 2009, the Director of Public Instruction categorically intimated that the proposal for conversion is just not acceptable. Mr. Panja then submitted that the

post of “Reader” is a promotional post and the petitioner is not qualified as per Rule 1999. Attention of the court was invited to the prescribed qualification for recruitment to the post of Lecturer in non-government affiliated degree colleges. So far the subject of Microbiology is concerned, it was indicated that the candidates with Master’s degree in Microbiology/Bio-chemistry/Molecular Biology/Botany (Microbiology as special paper) are eligible for a Lectureship in Microbiology, provided they possess NET/SLET in the relevant disciplines.

9. It was then submitted that there could be no reason for any legitimate expectation. Deriving inspiration from the decision of the Apex Court in the case between Jalandhar Improvement Trust vs. Sampuran Singh etc. etc. as reported in 1999 (4) Supreme 270, it was submitted by Mr. Panja that there could be no promissory or equitable estoppel contrary to law.

10. The gist of Mr. Panja’s argument was that there could be no reason for any sort of expectation, far less any legitimate expectation.

11. No doubt, the petitioner, despite his initial reluctance got actively or effectively involved in having the department of Microbiology in the respondent-college. His contribution was time and again appreciated by the Governing Body in its various resolutions. But can it be said that the government authorities ever made any promise or gave any assurance to accommodate him in the said department?

12. Even assuming it to be so, can it be invoked for the purpose of accommodating him in the Department of Microbiology for which he does not have the requisite qualifications?

13. In the case between Dr. Ashok Kumar Maheswari vs. State of U.P. & Anr., as reported in 1998(2) Supreme 100, the Supreme Court referring to some of its earlier decisions observed that the Rule of “Promis-sory Estoppel” cannot be invoked for the enforcement of a ‘promise’ or a

‘declaration’ which is contrary to law or outside the authority or power of the Government or the person making that promise.

14. In the case between Union of India & Anr. vs. International Trading Co. & Anr., as reported in 2003 (4) Supreme 114, the Apex Court held that a claim based on merely legitimate expectation without anything more cannot ipso facto give a right. Legitimacy of an expectation can be inferred only if it is founded on the sanction of law. A claim based on mere legitimate expectation without anything more cannot ipso facto give a right.

15. Deriving inspiration from the decision of the Apex Court in the case between Secretary, State of Karnataka & Ors. vs. Umadevi & Ors., as reported in 2006 (3) Supreme 415. Mr. Panja contended that if such a claim based on legitimate expectation is accepted, it would run counter to the constitutional mandate. It was further submitted by Mr. Panja that doctrine of estoppel could not be allowed to be urged against the administration. The court cannot direct the Administration to commit breach of statutory provisions and thus, harm general public interest. In this context, he referred to the decision of the Apex Court in the case of Hira Tikkoo vs. Union Territory, Chandigarh & Ors., as reported in 2004 (3) Supreme 690.

16. One of the principles of public law powers is:

“A public body with limited powers cannot bind itself to act outside of its authorized powers; and if it purports to do so it can repudiate its undertaking, for it cannot extend its powers by creating an estoppel”. (Ref: - De Smith, Woolf and Jowell in the book on “Judicial Review of Administration Action” (5<sup>th</sup> Edition at page 565). The doctrine of estoppel, according to Mr. Panja, cannot be applied against public authorities when their mistaken advice or representation is found to be in breach of a Statute and therefore, against general public interest.

Though learned Counsel for the parties referred to various decisions in order to derive strength in support of their respective contentions, it may very well be said that “a case is only authority for what it actually decides.”

Lord Halsbury in *Quinn v. Leatham*, (1901) AC 459 observed:

“I entirely deny that it can be quoted for a proposition that may seem to flow logically from it.”

It was further said:

“Every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but govern and are qualified by the particular facts of the case in which such expressions are to be found.”

17. What essentially emerges from the discussion as made earlier is that an expectation whose fulfilment requires that a decision-maker should make an unlawful decision, cannot be a legitimate expectation. It is inherent in many of the decisions on substantive legitimate expectations, and express in several, that the expectation must be within the powers of the decision-maker.

18. It is well settled that judicial review provides the means by which judicial control of administrative action is exercised. The subject matter of every judicial review is a decision made by some person (or body of persons) other than the decision-maker, although it may affect him too.

It must affect such other person either:

- (c) by altering rights or obligations of that person which are enforceable by or against him in private law; or

- (d) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.

In Blacks Law Dictionary the word ‘legitimate’ has been defined as:

- (1) Complying with the law; lawful, (2) to genuine; valid...

19. The respondents sought to assail the claim of the writ petitioner on the ground that such a claim by way of resisting reversion to the Department of Botany could not be based on any valid reason.

20. Sir Edward Coke claimed that “reason is the life of the law, nay the common law itself is nothing else but reason.”

The law is not an exact science as judicially acknowledged. It would be a strange science if it is decided upon precedents only. No doubt, precedents serve to illustrate principles and to give them certainty. But such principles are to be applied in after due regard to the facts and circumstances of each case.

21. Mr. Panja was quite right in submitting that in view of the specific provisions of the West Bengal College Service Commission Act, 1978, the Calcutta University First Statute, 1979 and various other Acts and Government Orders, the expectation of the writ petitioner cannot by any stretch of imagination be said to be legitimate. The academic background of the writ petitioner and

the requirement for being posted in the Department of Microbiology unfortunately are significantly different.

22. Considering all such facts and circumstances, I am of the view that grievances of the writ petitioner, however, genuine the same may be, are not legally redressable.

23. It may however, be mentioned that it will be open for the petitioner to approach the respondent-authorities seeking an opportunity to allow him to continue in the Department of Microbiology till his retirement which is reportedly not far off. If such an approach is made, the respondent-authorities will take necessary action as they may deem fit and proper.

24. With these observations, the instant writ application being A.S.T.No.168 of 2009 stands dismissed.

25. Interim order, if any, stands vacated.

26. There will, however, be no order as to costs.

27. Urgent xerox certified copy of this judgment, if applied for, be supplied to the parties upon due compliance of the legal formalities.

**(S.P.Talukdar, J.)**