

**(2009) 02 RAJ CK 0104**  
**In the Rajasthan High Court**

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| Arti Devi (Smt.)              | Vs | APPELLANT  |
| State of Rajasthan and Others |    | RESPONDENT |

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**Date of Decision :** 17-02-2009

**Acts Referred:**

**Citation :** (2009) 02 RAJ CK 0104

**Hon'ble Judges :** Govind Mathur, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Govind Mathur, J.—To assail validity of the order dt. 20.10.1993 passed by the Medical Officer Incharge Primary Health Center, Ramsar, Distt. Barmer this petition for writ is preferred. In brief facts of the case are that the petitioner entered in services of the respondents as Auxiliary Nurse Midwife in the year 1989 and was posted at Primary Health Center, Ramsar. The Medical Officer Incharge Primary Health Center, Ramsar by the order dt. 20.10.1993 ordered for effecting recovery from pay of the petitioner as she did not report on duties from the month of August 1991 to January 1992. On receiving order aforesaid the petitioner submitted a representation to the Chief Medical and Health Officer, Barmer refuting the alleged absence. She also reiterated her cause by submitting subsequent representations, copies whereof are also available on record as Annexures 6,7,8,9 and 10. The respondents continued with recovery from pay of the petitioner in pursuant to the order dt. 20.10.1993, thus, the petitioner preferred this petition for writ before this Court. It is asserted by learned Counsel for the petitioner that before making an order to effect recovery from pay of the petitioner no notice or opportunity was given to her to establish her innocence.

2. Per contra, as per reply submitted on behalf of the respondents the petitioner was subjected to an inquiry and only after having a specific finding regarding absence of the petitioner from duties an order to effect recovery from pay was passed. The respondents along with the reply to the writ petition have also placed on record copies of certain documents to substantiate the averments

relating to holding of the inquiry.

3. I have examined all the documents placed on record. The document Annexure-R/1 is a communication dt. 18.01.1992 from Chief Medical and Health Officer, Barmer instructing Vaccination Officer, Barmer to inquire about a complaint received from the office of the Collector, Barmer relating to absence of the petitioner from duties. In pursuant to the communication dt. 18.01.1992 the Vaccination Officer recorded statements of certain residents of the village Akoda and gave a finding that he petitioner was absent from duties during the period in question. From perusal of the documents placed on record it is apparent that whatever inquiry was conducted that was behind the back of the petitioner. She was not at all having knowledge or information about initiation of such an inquiry. What it appears is that the inquiry made by the Vaccination Officer was only a preliminary inquiry and not a regular inquiry as required under Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. The respondents have also placed on record copies of the statements given by certain persons in presence of Chief Medical and Health Officer, Barmer regarding absence of the petitioner on duties for quite a long time. However, those statements were also recorded in absence of the petitioner. As per the provisions of Rule 14 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 recovery from pay of a civil servant is a minor punishment and no such penalty can be imposed without holding an inquiry as per the provisions of Rule 17 of the Rules of 1958. In the instant matter no inquiry as per the provisions of Rule 17 of the Rules of 1958 was conducted against the petitioner. The inquiry which is said to be conducted is nothing but a preliminary inquiry and on basis of that no penalty could have been imposed by the disciplinary authority.

4. In view of whatever stated above the order dt. 20.10.1993 passed by the Medical Officer, Incharge Primary Health Center, Ramsar and the order dt. 02.01.1993 passed by the Chief Medical and Health Officer, Barmer in pursuant to which the order dt. 20.10.1993 was issued are bad in the eye of law.

5. Accordingly, this petition for writ is allowed. The order dt. 02.01.1993 passed by the Chief Medical and Health Officer, Barmer and consequential order dt. 20.10.1993 passed by the Medical Officer, In charge Primary Health Center, Ramsar are quashed. The respondents are directed to refund the amount already recovered from the petitioner in pursuant to the orders dt. 02.01.1993 and 20.10.1993 to her within a period of three months from the date she serves a certified copy of this order upon the Chief Medical and Health Officer, Barmer. The petitioner is also declared entitled for getting an interest upon the amount erroneously recovered from her at the rate of 7.5% per annum.

No order as to costs.