
(2008) 07 MP CK 0075
In the Madhya Pradesh High Court

Dr. Arti Choudhari

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 29-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311

Citation : (2008) ILR (MP) 3110 : (2009) 2 MPHT 121 : (2009) 3 MPJR 111 : (2009) 2 MPLJ 66

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.

Petitioner was appointed on the post of Medical Officer on contract basis in the Public Health & Family Welfare Department of the State Government. Pursuant to her appointment she joined the service w.e.f. 5-12-2005 vide Annexure P-2 at Primary Health Centre, Borasa, Block Sonkutch, District Dewas. As the petitioner was not keeping good health, she submitted an application on 27-11-2007 (Annexure P-3) seeking leave on medical ground. Another application for extension of leave was submitted by her on 8-12-2007 (Annexure P-4). However, the Chief Medical & Health Officer, Dewas vide impugned order dated 7-1-2008 (Annexure P-1) terminated the petitioner's service on the ground that she remained unauthorisedly absent since 28-11-2007 and did not comply with the conditions of her contract appointment.

Feeling aggrieved by the aforesaid termination order dated 7-1-2008 (Annexure P-1) the petitioner has filed this petition under Articles 226 and 227 of the Constitution of India.

The case of the petitioner is that she was appointed under M.P. Lok Swasthya Evam Parivar Kalyan Chikitsa Samvida Sewa (Niyukti Tatha Sewa Ki Sharten) Niyam, 2002 (in short, "the Rules"). As per the Schedule attached to the Rules,

the Appointing Authority for the post of Medical Officer on contract basis, is the Commissioner, Health Services, M.P., Bhopal. She stated that her service could not have been terminated by the fourth respondent, Chief Medical and Health Officer, Dewas, being an officer much below in the rank of her Appointing Authority, Commissioner, Health Services, M.P., Bhopal. Thus, according to her the order of termination of her service is violative of Article 311 of the Constitution of India and as such is liable to be quashed. She also alleged that the impugned termination order was issued on the ground that she was absent from duty unauthorisedly. This allegation according to her is factually incorrect and the fourth respondent without issuing any show- cause notice and holding any Departmental Enquiry could not have issued such an order terminating her services.

The respondents filed return and have stated that the petitioner proceeded on leave without getting the leave sanctioned and as such her services have rightly been terminated by the fourth respondent.

On going through the Rules, the Schedule attached to the Rules and the controverted averments made in the petition that the petitioner was holding the post of Medical Officer and her Appointing Authority is Commissioner, Health Services, M.P., Bhopal, in my considered view her services could not have been terminated by the fourth respondent Chief Medical and Health Officer, Dewas an Officer much below in the rank of the Commissioner, Health Services in view of the Article 311(1) of the Constitution of India.

It is also revealed from the impugned termination order dated 7-1-2008 that the petitioner's services have been terminated by the fourth respondent alleging therein that she had remained unauthorisedly absent. However, before terminating her services on this ground neither any show-cause notice was issued to her nor any enquiry was conducted. Thus, on this ground also the impugned order is unsustainable.

Having regard to the aforesaid facts and circumstances of the case, I have no hesitation to hold that the impugned termination order dated 7-1-2008 (Annexure P-1) passed by fourth respondent Chief Medical and Health Officer, Dewas is arbitrary and being violative of Article 311(1) of the Constitution of India is without jurisdiction.

Accordingly, the impugned order dated 7-1-2008 (Annexure P-1) is quashed. As a result, the petitioner is directed to be reinstated with consequential benefits. However, in case the respondents feel, it will be open for them to proceed against the petitioner by taking action against her for her alleged authorized absence, in accordance with law.

The petition succeeds. However, no order as to costs.