
(1996) 07 AHC CK 0104
In the Allahabad High Court
Case No : C.M.W.P. No. 3195 of 1986

Dr. Jag Mohan Lal

APPELLANT

Vs

U.P. Public Service Tribunal No. "2" and Others

RESPONDENT

Date of Decision : 24-07-1996

Acts Referred:

Constitution of India, 1950 — Article 16, 226, 227, 309, 311
Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 4

Citation : (1996) 07 AHC CK 0104

Hon'ble Judges : N.B. Asthana, J;D.S. Sinha, J

Bench : Division Bench

Advocate : P.K. Singhal, for the Appellant;

Final Decision : Partly Allowed

Judgement

N.B. Asthana, J.—This petition under Article 226 of the Constitution of India has been filed for issuing a writ, order or direction in the nature of certiorari for quashing the order dated 23.11.85 passed by Respondent No. 1 (Annexure 15 to the writ petition) in so far it goes against the Petitioner and for a writ of mandamus directing the Respondents to pay to the Petitioner his full pay and allowances from 14.7.1978 upto date, that the period of absence from duty w.e.f. 14.7.1978 to 31.5.1979 be regularised by grant of leave and that the period for which the Petitioner remained out of service be counted while determining his seniority and also for all other purposes.

2. The Petitioner was appointed in the Provincial Medical Service vide appointment letter No. 21/11/59/3108 dated Lucknow 16.12.1979 in the scale of pay of Rs. 300-900 and was posted as Medical Officer, Rudrapur where he took charge on 15.4.1977. The appointment letter is Annexure 1 to the writ petition which shows that his appointment was on temporary basis for one year or till the Government required his services or till a candidate duly recommended by the Public Service Commission was available. In the year 1973, applications were invited for 2056 posts in the Provincial Medical and Health Services. The

Petitioner applied for the same and was selected by the Public Service Commission for the post of Medical Officer. The Petitioner was then transferred to Muzaffarnagar where the Chief Medical Officer, Muzaffarnagar posted him on 11.7.78 as Medical Officer Incharge, Primary Health Centre, Kandhala. Prior to it, he was posted at Pilibhit. On 13th July, 1978, he came to Pilibhit to give evidence in a court. It is alleged that he had an attack of appendicitis and had to apply for medical leave for two months, i.e., from 14th July, 1978 to 11th September, 1978. He then moved an application for granting him earned leave from 14.7.1978 to 20.9.1978 on medical ground and from 21.9.78 to 10.10.78 on the ground of his mother's serious illness. He then sought extension of leave. The Chief Medical Officer, Muzaffarnagar vide his letter No. PF/78-79/796, dated 19.10.78 asked him to resume his duties and to shift his mother to Kandhala where he was posted. As he was not in a position to join his duties immediately because of the illness of his mother, he sent an application on 1.11.1978 to Director, Medical & Health and Family Planning (Women) Services, U.P. Lucknow tendering a conditional resignation. Copy of this resignation is Annexure 3 to the writ petition. The Chief Medical Officer, Muzaffarnagar informed the Petitioner vide letter No. PF/78-79/796/970, dated 26.5.79 that the resignation letter was not in accordance with law and rules and asked him to resume the duties to hand over the charge at Primary Health Centre, Kandhala and to join District Hospital, Muzaffarnagar. In the meantime, his mother recovered and, therefore, on 1.6.79, the Petitioner filed an application before the Director, Medical & Health U.P. Lucknow to cancel the conditional resignation letter and to issue his posting orders and to regularise the period of absence from duty w.e.f. 14.7.78 to 1.6.79 against the leave of whatever nature was admissible and due to him under the Rules. The Chief Medical Officer, Muzaffarnagar refused to let him Join at Muzaffarnagar telling him that unless directions are received from the Director, Medical & Health, U.P., he would not permit him to Join his duties. He thereafter sent a number of letters to the Director, Medical & Health, U.P. and the Chief Medical Officer, Muzaffarnagar for payment of his salary and posting orders. Instead of putting head to his request, the State of U.P. vide Office Memorandum dated 11.9.81 terminated the services of the Petitioner. (Annexure 14 is the copy of Office Memorandum dated 11.9.81). The conditional resignation submitted by the Petitioner was treated as one month's notice under U.P. Temporary Government Servants (Termination of Services) Rules, 1975 and the Petitioner's services were terminated w.e.f. forenoon of 1.12.78.

3. Aggrieved by the aforesaid termination order, the Petitioner filed Claim Petition No. 309/11/82 before Uttar Pradesh Public Services Tribunal II, Lucknow. This Petitioner was decided by the Tribunal on 23.11.85. The operative portion of the judgment runs as follows:

The claim of the Petitioner is allowed to the extent that the impugned order of termination Annexure 2 is quashed. The opposite parties are directed to allow the Petitioner to Join at his place of last posting, i.e., District Muzaffarnagar. The Petitioner will be entitled to pay and other allowances from the date he joins at

his place of posting. The Ops are at liberty to take suitable action against the Petitioner for misconduct of wilful absence from duty. The period for which the Petitioner remained out of service on account of termination will not be counted while counting length of service of the Petitioner for the purposes of seniority and other consequential benefits. Costs easy.

4. The Tribunal came to the conclusion that the letter of resignation was not in accordance with law. The resignation was never accepted. Moreover, it was a letter of resignation and not a notice for termination of services. It was submitted to the Director of Medical & Health Services, who was not the appointing authority of the Petitioner. It then examined the order of termination of Petitioner's services (Annexure 14 to the writ petition) and came to the conclusion that the termination order is in contravention of Article 311 of the Constitution and on this ground the termination order was quashed.

5. Feeling aggrieved by the aforesaid order in so far as it adversely affected the Petitioner, he has come to this Court.

6. We have heard Sri Chandra Bhan Gupta, learned Counsel appearing for the Petitioner and Sri R. C. Yadav, learned Standing counsel, for the Respondents.

7. Section 4 of U.P. Public Services (Tribunal) Act, 1976 (for short "the Act") relates to reference of claims to Tribunal. It says that "if any person who is or has been a public servant claims that in any matter relating to employment as such public servant his employer or any officer or authority subordinate to the employer has dealt with him in a manner which is not in conformity with any contract, or:

(a) in the case of a Government servant, with the provisions of Article 16 or Article 311 of the Constitution or with any rules or law having force under Article 309 or Article 313 of the Constitution;

(b) in the case of a servant of a local authority or in statutory corporation, with Article 16 of the Constitution or with any rules or regulations having force under any Act of Legislature constituting such authority or corporation, he shall refer such claim to the Tribunal, and the decision of the Tribunal thereon shall, subject to the provisions of Articles 226 and 227 of the Constitution, be final.

8. Certain proviso and the explanation have been added to this section with which we are not concerned at this stage.

9. The Tribunal has jurisdiction to decide the claims referred to it u/s 4 of the Act. The matter whether the period for which the Petitioner remained out of service on account of the termination is to be counted while counting the length of service of the Petitioner for the purposes of seniority and other consequential benefits was a matter to be decided by the Respondents No. 1 and 2 and in case they decide against the Petitioner, then the Petitioner may have a right to move the Tribunal for redressal of his grievance. It was also for these Respondents to decide as to whether the absence of the Petitioner from duty be regularised by

granting the Petitioner leave for absence from duty or to treat it as leave without pay. The Tribunal was also not justified in directing that the Petitioner will be entitled to pay and other allowances from the date he Joins at his place of posting. Since the termination order was held to be illegal and as the Petitioner was agitating before the Chief Medical Officer, Muzaffarnagar and Director, Medical and Health Services, U.P. Lucknow for his posting and payment of salary, he could not have been deprived of his salary for the period he was willing to join the duty and was making application for his permission to join at Muzaffarnagar, his last place of posting.

10. The contention on behalf of the Respondents No. 2 and 3 is that the Petitioner did not comply with the transfer order and left the charge wilfully without prior sanction of the leave thereby Jeopardising the interest of the public. If that was so, then it would be for Respondents No. 2 and 3 to take appropriate action by way of disciplinary proceedings but we do not think that the Tribunal could have adjudicated upon this question and deprived the Petitioner of his salary and seniority from the date he went on leave till the date he Joined the service, and to that extent, the petition has to be allowed.

11. The petition is allowed in part. The impugned order dated 23.11.85 of Respondent No. 1 in so far as it deprived the Petitioner of pay and other allowances prior to the date he joined his place of posting after the judgment of the Tribunal and for the period for which he remained out of service on account of termination will not be taken into consideration while counting length of service of the Petitioner for the purposes of seniority and other consequential benefits, is set aside. These matters are to be decided by Respondents No. 2 and 3. Whether the Petitioner is entitled to full pay and allowances from 14.7.1978 upto date and whether the period of absence from duty w.e.f. 14.7.1978 to 31.5.79 is to be regularised by grant of leave are also to be decided by the Respondents No. 2 and 3. In the circumstances, the parties would bear their own costs of this writ petition.