
(2011) 07 JH CK 0246

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5991 of 2006

Dr. (Mrs.) Karuna Jha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Citation : (2011) 4 JCR 35

Hon'ble Judges : N.N. Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.N. Tiwari. J.

1. By the Court-In this writ petition, the petitioner has prayed for quashing the order contained in Memo No. 5105 dated 18.8.2006 (Annexure-10) issued by the Director. Rajendra Institute of Medical Sciences (R.I.M.S). Ranchi whereby the petitioner's services have been terminated. The petitioner has also prayed for payment of arrears of salary of the period before her termination i.e. from June 2005 to 6.10.2005.

2. Grievance of the petitioner is that the petitioner has been removed on the allegation of her long absence, but no such charge was framed and served on her. There was no enquiry of the said charge and no opportunity of defending herself was given to her. Further, the impugned order has been issued by the Director, R.I.M.S. who has no authority to terminate the services of the petitioner. The impugned order is, thus, wholly illegal, arbitrary and without jurisdiction.

3. A counter-affidavit has been filed by the respondents opposing the writ petition. It has been stated, inter alia, that the petitioner was not following the terms and conditions of services. The private practice is barred according to the terms of the R.I.M.S, but she did not submit certificate that she is not practising. On enquiry it was found that she has been practising privately in Bharati Nursing

Home. She had taken the ground of illness for her absence, but she did not satisfy the respondents by producing any document in support thereof.

4. Learned counsel for the petitioner submitted that the petitioner had applied for leave, but her application was arbitrarily rejected. He further submitted that the petitioner has been removed from services on the said charges, but the charges were not informed to her, nor any enquiry was held as prescribed by law and without giving any opportunity to the petitioner, the major punishment of termination of her services has been passed. Learned counsel referred to and relied on a decision of this Court in *Mala Devi Vs. State of Jharkhand and Others*, . In *Mala Devi (supra)*, wherein it has been held that the major punishment can only be awarded after framing of charge and on holding an enquiry and after giving the delinquent proper opportunity to defend.

5. Learned counsel for the respondents, on the other hand, submitted that the impugned order is a "termination simpliciter" and the same is not stigmatic and punitive and as such no show cause notice was required to be given to the petitioner. He further submitted that the order intends to cancel the petitioner's deputation, but the same has not been properly worded.

6. I have heard learned counsel for the parties and considered the facts and materials on record. I find that, by the impugned order the petitioner's services have been terminated with retrospective effect. The impugned order is dated 18.8.2006 and she has been terminated w.e.f 7.10.2005. It is an admitted fact that before passing the impugned order of her termination from R.I.M.S. Ranchi, neither any notice was given to the petitioner nor she was given any opportunity to defend herself. On plain reading of the impugned order, it appears that the petitioner's services have been terminated on the allegation of her long absence. In the counter-affidavit it has been further alleged that she had been practising privately in some Nursing Home contrary to the terms of services. Since the said charges led to termination of services of the petitioner, the same cannot be said to be a "termination simpliciter". The impugned order is, thus, stigmatic and punitive and the same has been passed without giving any notice to the petitioner and without holding any enquiry. The order has been passed by the Director, R.I.M.S. who is not the Appointing Authority. The respondents have not produced anything to show that he has been conferred any such power. The impugned order is, thus, wholly illegal, arbitrary and is violative of principle of natural justice.

7. For the reasons aforesaid, this writ petition is allowed. Impugned order dated 18.8.2006 contained in Annexure -10 is quashed. As a consequence, the petitioner shall be entitled to get all benefits without any break in service.

8. So far as the petitioner's claim of arrears of salary before her termination is concerned, it is an admitted position that the respondents have not passed any order disposing of her said claim. The Director, Rajendra Institute of Medical Sciences, Ranchi (respondent No. 4) is directed to consider the petitioner's said

claim and pass appropriate order in accordance with law within four weeks from the date of receipt/production of a copy of this order.