
(1998) 05 P&H CK 0093
In the Punjab And Haryana At Chandigarh
Case No : Writ Petition No. 1099 of 1998

Dr. (Ms.) Neeta Mehta

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 06-05-1998

Acts Referred:

Constitution of India, 1950 — Article 14

Haryana Civil Medical Services (Class II) Rules, 1978 — Rule 11(2), 11(3)

Citation : (1999) 1 ILR (P&H) 117 : (1999) 3 LLJ 830

Hon'ble Judges : Iqbal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Tribhuvan Dahiya, for S.P. Daler, for the Appellant; Ritu Bahri, Asst. A.G., for the Respondent

Final Decision : Allowed

Judgement

G. S. Singhvi, J.—Whether the Government could terminate the petitioner's service under Rule 11 of the Haryana Civil Medical Services (Class II) Rules, 1978 (hereinafter referred to as "the Rules") after the expiry of the maximum period of probation specified in the said rule and whether the impugned order dated January 8, 1998 is liable to be invalidated on the ground of arbitrariness and violation of Articles 14 and 16 of the Constitution are the two inter-related questions which arise for adjudication in this petition.

2. The facts necessary for deciding this petition are that the petitioner joined the service on May 16, 1994 in pursuance of the order dated March 25/30, 1994 issued by the Government of Haryana appointing her to the Haryana Civil Medical Services (Class II) on probation for a period of two years. This order was issued on the recommendations of the Haryana Public Service Commission. In terms of para 4 of the order of appointment which enabled the Government to extend the period of probation upto 3 years, order dated May 25, 1996 was issued by the Commissioner and Secretary to Government Haryana, Health Department extending the period of her probation by one year. The extended period of

probation ended on May 14, 1997. Thereafter the Government did not issue any order extending the period of probation or terminating the service of the petitioner. However, after lapse of about 8 months counted from the date of expiry of the period of probation, the Financial Commissioner and Secretary to Government of Haryana, Health Department issued the impugned order dated January 8, 1998 terminating the petitioner's service in terms of Rule 11(2) of the Rules.

3. The petitioner has challenged the impugned order on the following grounds :

(i) The Government does not have the jurisdiction to terminate her service under Rule 11(2) of the Rules after the expiry of maximum period of probation specified in the recruitment rules.

(ii) The impugned order is wholly arbitrary and unconstitutional.

4. In the written statement filed by them through Shri P.L. Jindal, Director General, Health Services, Haryana, the respondents have pleaded that the impugned order is justified because the work and conduct of the petitioner was not found satisfactory during the period of probation. In order to appreciate the stand of the respondents in a correct perspective, it will be useful to reproduce the averments made in paragraph 3 of the preliminary objection and paragraphs 4, 5, 9, 12 and 13 of the main written statement.

The same read as under :

Paragraph 3 of preliminary objections.

"That the work and conduct of the petitioner during the period of probation was considered by the respondents and the same was found unsatisfactory. The ACR of the petitioner for the year 1994-95 was good and for the year 1995-96 was graded as "Average". Therefore, the probation period of the petitioner was extended for one year vide letter No. 30/53/ 97-IHBI, dated June 9/18, 1997. After the expiry of three years, the probation case of the petitioner was again examined. The ACR of the petitioner for the year 1996-97 was graded as "outstanding" but there are adverse remarks that the petitioner did not maintain her headquarter properly. Accordingly all the Civil Surgeons were asked to ensure that the headquarter is maintained by the doctors. It is further submitted that the health services are essential services and not maintaining the headquarter for a doctor is a very serious lapse which cannot be condoned. Keeping in view the record of the petitioner, the services of the petitioner have been dispensed with as per Rule 11(2) of the Haryana Civil Medical Services (Class-II) Rules, 1978, during probation vide Govt. order dated December 29, 1997 issued on January 8, 1998 (Annexure R/I).

It is also submitted that the adverse remarks in the ACR for the year 1995-96 were recorded is under :

1. Laborious and ability Average 2. Intellectual ability Average 3. Professional

ability Average 4. Administrative ability Average 5. Latest professional and literature knowledge Average 6. Active participation in F. W. Programme Nil. 10. Active Part in Community Programme i.e. Malaria Programme, Small Pox, Eradication Programme, T.B. Control, School Health Programme etc. Nil 11. Whether the officer maintained her headquarter after closing the office during the holidays. No 12. How much work did at flood time. No 13. Grading Average.

These adverse remarks were conveyed to the petitioner vide D.G.H.S. letter dated October 3, 1997. The petitioner represented against these adverse remarks vide her representation dated November 28, 1997, On the representation of the petitioner the comments of the Reporting Authority were obtained. The Reporting Authority repeated his stand already taken in the ACR. In view of the comments given by the Reporting Authority, there is no substance to expunge the adverse remarks from the ACR of the petitioner for the year 1995-96. In view of this even at this stage no supporting material is found in favour of the petitioner to review the order dated December 29, 1997. Hence the order dated December 29, 1997 issued on January 8, 1998 are justified which are sustainable in the eye of law."

xx xx xx Paragraph 4 of main written statement.

In reply to para 4 of the writ petition, it is stated that the probation period was of two years and if it was not cleared it could be extended for one year. The petitioner joined her duty on May 16, 1994 and her probation period became due on May 15, 1996. Her work and conduct was not found satisfactory due to which her probation period was extended for one year w.e.f. May 15, 1996 to improve her working. A copy of this order was given to the petitioner. In her ACR for the year 1996-97 there were adverse remarks that she does not maintain headquarter occasionally. Whereas the petitioner is getting H.R.A. and it is essential to maintain headquarter being a Medical Officer to provide Emergency Health Services to the public residing there. Thus, the petitioner has not discharged her duties satisfactorily and hence her services were terminated vide order dated December 29, 1997, January 8, 1998 for which one month notice was not required, as the petitioner had not crossed the probation period, the petitioner is considered to be purely on temporary basis.

xx xx xx Paragraph 6 of main written statement.

That is reply to para 6 of the writ petition, it is submitted that the Annual Confidential Reports of the petitioner for the years 1994-95 and 1995-96 were examined. Her annual confidential report for the year 1994-95 was "Good" and that of 1995-96 "Average". As the record of the petitioner of probation period was not overall "Good", the probation period was extended for one year w.e.f. May 15, 1996 as per Rule 11 of the Rule ibid vide Govt. order No.30/57/97-IHBI dated June 9/18, 1997.

XX XX XX Paragraph 9 of main written statement.

That in reply to para of the writ petition it is submitted that the annual confidential report of the petitioner for the years 1994-95, 1995-96 and 1996-97 were considered and out of the 3 ACRs one was Good, one was Average and one contained adverse remarks about not maintaining headquarter occasionally. The record of the petitioner clearly shows that her work and conduct was not satisfactory. Hence Govt. dispensed with the services of the petitioner vide Haryana Govt. Order No. 30/ 57/97- IHBI dated January 9, 1998, as per terms of Rule 11(2) of Haryana Civil Medical Services (Class II) Rules, 1978. These orders were sent to the petitioner at her residential address but have been received back through postal authorities with the remarks that "Yahan Se Makan Chhodkar Chala Goya, Islie Wapis Jaya"

Paragraph 12 of main written statement.

That in reply to para 12 of the writ petition, it is submitted that the ACR of the petitioner for the period from July 1, 1995 to March 31, 1996 was written Average by the Reporting Officer. This ACR was conveyed to the petitioner vide letter No. 63/N- 4E-II-97/8419 dated October 3, 1997. The representation of the petitioner against the adverse remarks was received in the office for answering respondent No. 2 on December 16, 1997. The comments on the representation of the petitioner have been called for from the Reporting Officer vide this office letter No. 63/N-4E-11-98/574 dated January 19, 1998. The Reporting Authority gave his comments dated March 2, 1998. The Reporting Authority repeated his stand already taken. In view of the comments given by the Reporting Authority, there is no substance to expunge the adverse remarks from the ACR of the petitioner for the year 1995-96.

Paragraph 13 of main written statement.

That in reply to para 13 of the writ petition, it is submitted that the ACR for the year 1996-97 of the petitioner contained the adverse remarks that "She does not maintain the headquarter occasionally". These adverse remarks were conveyed to the petitioner vide letter No. 63/N- 4E-II-98/250 dated January 13, 1998. The representation against the adverse remarks was received in the office for answering respondent No.2 on March 21, 1998. The comments of the representation of the petitioner have been called for whom the Reporting Officer. The Reporting Authority gave his comments and the Reporting Authority repeated his stand already taken in the ACR. In view of the comments given by the Reporting Authority, there is no substance to expunge the adverse remarks from the ACR of the petitioner for the year 1996-97. It is worthwhile to mention here that until and unless some specific order is passed by the competent authority, it cannot be presumed that the petitioner has cleared the probation period successfully."

5. We have heard Shri Tribuvan Dahiya and Ms. Ritu Bahri and have perused the record of the writ petition as well as the record produced by the learned Assistant Advocate-General which consists of two files and the Annual

Confidential Reports of the petitioner.

6. Rule 11 of the Rules on the interpretation of which will depend the adjudication of one of the two issues raised in the writ petition reads as under :

"11. Probation.--(1) Persons appointed to the posts in the service shall remain on probation for a period of two years :

Provided that--

(a) any period after such appointment spent on deputation on a corresponding or a higher post shall count towards the period of probation;

(b) any period of officiating appointment shall be reckoned as period spent on probation, but no person who has so officiated shall, on the completion of the prescribed period of probation, be entitled to be confirmed, unless he is appointed against a permanent vacancy.

(2) If, in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactory, it may dispense with his services or extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the first period of probation.

Provided that the initial period of probation including extension, if any, shall not exceed three years.

(3) On the completion of the period of probation of a person, the appointing authority may, if his work or conduct has, in its opinion been satisfactory :

(i) confirm such person from the date of his appointment, if appointed against a permanent vacancy;

(ii) confirm that such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy; or

(iii) declare that he has completed his probation satisfactorily, if there is no permanent vacancy ;

Provided that if neither of the above three decisions is taken within, six months of the expiry of the original or extended period of probation, if any, then at the expiry of the aforesaid six months period the officer concerned would be deemed to have satisfactorily completed his period of probation."

7. An analysis of this rule shows that :

(i) every person appointed to the post in service to remain on probation for a period of two years;

(ii) the period spent on deputation corresponding or a higher post after appointment in the service is to be treated as the period spent on probation. Likewise, the period of service rendered on officiating appointment is to be counted towards the probation;

(iii) if the appointing authority forms an opinion that during the period of probation the work or conduct of the officer is not satisfactory, then it can either terminate his service or extend the period of probation and thereafter pass such order which it could have passed on the expiry of first period of probation;

(iv) the exercise of power to extend period of probation is subject to the condition that the total period of probation including extension shall not exceed three years ;

(v) What is to be done on completion of the period of probation is provided in Rule 11 (3). Under this Rule, the appointing authority may,

(a) if it is of the opinion that the work or conduct of the officer is satisfactory confirm him from the date of his appointment provided he was appointed against a permanent vacancy,

(b) if permanent vacancy is not available then confirm the officer from the date, when permanent vacancy occurs, (c) if the permanent vacancy is not available, the appointing authority can declare that the officer has satisfactorily completed the period of probation.

Proviso to Rule 11(3) contains a deeming clause i.e. a probationer is deemed to have "satisfactorily completed his period of probation if the appointing authority does not take either of the aforementioned three decisions within 6 months of the expiry of the initial and the extended period of probation, if any.

8. It is, thus, clear that the appointing authority has to take a decision on the issue of termination of the service of a probationer either at the end of initial period of probation or at the end of extended period of probation. It is also required to decide the issue of confirmation of the officer who has satisfactorily completed the period of probation. However, if no order is passed by the competent authority at the end of initial period of probation, the officer cannot treat himself as automatically confirmed. Rather, he will be deemed to be continued on probation by employment subject to the condition that the maximum period of probation cannot exceed the outer limit of 3 years indicated in proviso to Rule 11 (2). Within a reasonable time from the expiry of the maximum period of probation, the competent authority is to take a decision regarding the confirmation of the officer. On a conjoint reading of Rule 11 (2) and Rule 11 (3), it can be said that this power has to be exercised by the appointing authority within six months of the expiry of extended period of probation. Failure of the authority concerned to pass appropriate order will bring into operation the deeming clause contained in proviso to Rule 11(3) and then the officer concerned will be entitled to claim that he has completed the period of probation. In other words, the appointing authority will be deemed to have divested of its power to pass an order of termination of the service of a probationer on the ground of unsatisfactory work or conduct after the expiry of the period specified in proviso to Rule 11 (3).

9. In the light of the above analysis of the relevant statutory provisions, we have to decide whether the respondent No. 1 could terminate the petitioner's service after more than 3 years and 6 months of her entry in the service. It is an admitted fact that the petitioner joined service on May 16, 1994. Therefore, the period of probation will be deemed to have commenced on May 16, 1994. In terms of Rule 11 (2) and paragraph 4 of the order of appointment, the tenure of her probation was extended for one year vide order dated, May 25, 1996. The extended period of probation ended on May 14, 1997. At that stage, the respondent No. 1 was required to pass appropriate order in terms of Rule 11 (3). However, the fact of the matter is that no order was made by the respondent No. 1 either on May 14, 1997 or within next 6 months. Instead, she passed the impugned order after about 8 months of the expiry of extended period of probation. This, in our opinion, the respondent No. 1 could not do because the power to terminate the service of the petitioner could have been exercised by the said respondent either at the end of the initial period of probation or the extended period of probation in any case, the respondent No. 1 did not have the jurisdiction to terminate the service of the petitioner in the purported exercise of power under Rule 11(2) after the expiry of maximum period of probation specified in proviso to Rule 11(3). We are also of the opinion that in the absence of any order passed by the respondent No. 1 within the period stipulated in Rule 11(3), the petitioner will be deemed to have completed the period of probation satisfactorily and thereafter it was not permissible for the respondent No. 1 to exercise power under Rule 11(2) with the assumption that she was still on probation.

10. On the basis of above discussion, we hold that the impugned order terminating the petitioner's service is ultra vires to the power vested in the respondent No. 1 to terminate the services of a probationer under Rule 11(2) of the 1978 Rules and, therefore, it is liable to be declared as without jurisdiction.

11. We also agree with the learned counsel for the petitioner that the impugned order is not only arbitrary but also suffers from malice in law. The record produced by Ms. Bahri show that after having rendered over one year's service, the petitioner applied for grant of maternity leave from July 24, 1995 to January 23, 1996. The Director General, Health Service sanctioned leave to her from July 24, 1995 to January 19, 1996. After availing leave, she joined duty on January 21, 1996 and continued in service till the issuance of order dated January 8, 1998.

12. The Annual Confidential Reports of the petitioner show that for the first year of her service i.e. 1994-95, the reporting officer has made the following remarks :

"Vernacular matter omitted."

13. For the year 1995-96, two Annual Confidential Reports have been recorded. The first report relates to the period from April 1, 1995 to July 7, 1995 and the second report relates to the period from July 1, 1995 to March 31, 1996. In the

first report, the petitioner has been rated as a "good" officer by the reporting officer. The remarks made by him which have been duly countersigned by the Director General of Health Services, Haryana are :

"Vernacular matter omitted."

In the second report, the petitioner has been rated as "average". The entries made in the various columns of the second report are :

"Vernacular matter omitted."

14. For the year 1996-97, the petitioner has been rated as "outstanding" except one remark in column 11 that occasionally she does not remain on headquarter after the close of office or in vacation. The entries made in the Annual Confidential Report of 1996-97, which have been duly counter-signed by the Director General, Health Services, Haryana are :

"Vernacular matter omitted."

15. The files produced by the learned Assistant Advocate-General do not contain any paper which could give an indication of the reasons which prompted the respondent No. 1 to extend the original period of probation. However, the note recorded in file No. 54/N/I31 shows that the period of the petitioner's probation was extended vide order dated May 25, 1996 on the premise that her two entries were not good. This was factually incorrect because as on May 25, 1996 none of the reports of the petitioner contained any adverse remark. As a matter of fact, only one Annual Confidential Report of the petitioner relating to the year 1994-95 was available as on May 25, 1996 and that was good. Two reports of the year 1995-96 have been recorded subsequently. Therefore, we have no hesitation in recording the conclusion that the decision to extend the period of probation was taken by the competent authority without application of mind.

16. The office nothings recorded in file No. 54/ N/I31 also show that initially the department had recommended issuance of an order that the petitioner has successfully completed the period of probation. Upon this, the Financial Commissioner, Health and Medical recorded the following note dated December 4, 1997 :

"Pl. link the file on which probation period was extended"

Upon this, the office reported that the file relating to extension of period of probation is not available and the same has been reconstructed. The note further says that her period of probation was extended because two reports were not good. However, as she has earned outstanding report in the next year, she is fit to be allowed to cross the probation period. The Financial Commissioner, Medical and Health did not accept the proposal of the office and she recorded the following order :

"Dr. Neeta Mehta, M.O., has got good report for the year 1994-95 and "Average" report in the year 1995-96. Hence, her probation period was extended for one

year. Now, the ACR for 1996-97 of Dr. Mehta is "Outstanding" but she did not maintain Hqrs. In view of the remark given in her ACR for 1996-97, her services should be terminated during probation period.

Sd/- (Veena Eagleton) F.C.H.M. December 29, 1997."

In view of this order, services of the petitioner were terminated.

17. A careful scrutiny of the office notings and the order passed by the Financial Commissioner depicts total non-application of mind by the concerned officers/officials. The office note suggesting that the petitioner's period of probation was extended because her two reports were not good, as already mentioned above, is ex facie erroneous. That apart, the manner in which the learned Financial Commissioner dealt with the case of the petitioner leaves much to be desired. To us, it appears that the concerned officer did not bother to go through the records before she decided to dispense with the service of the petitioner. She did not notice that for the year 1995-96, two Annual Confidential Reports of the petitioner have been recorded and in one of them she has been rated as a "good officer". She also over looked the fact that in the second report in which the petitioner has been rated as "average" is contrary to the instructions issued by the Government of Haryana for drawal of the Annual Confidential Reports. The learned Commissioner did not take cognizance of the fact that the petitioner was on maternity leave from July 24, 1995 to January 19, 1996 and the authority concerned did not have the occasion to assess her performance in respect of that period and that the average report can, at the best, be treated to have been recorded in respect of the petitioner's work from January 21, 1996 to March 31, 1996. In the last report (1996-97); the petitioner has been rated "outstanding" with a minor adverse observation that occasionally she does not remain at the headquarters after office hours and during holidays. In our view, on the basis of the entry made in the Annual Confidential Reports of the petitioner, no reasonable person could form an opinion that her work and conduct was unsatisfactory warranting termination of her service. If the competent authority had taken trouble to go through the record of the petitioner, it could not have been possible for her to direct the termination of petitioner's service. We, therefore, hold that the order terminating the service of the petitioner has been passed in a casual and arbitrary manner and, therefore, it is not only violative of Article 14 of the Constitution but suffers from malice in law.

18. For the reason mentioned above, the writ petition is allowed. Order dated January 8, 1998 is quashed. For the harassment and humiliation suffered by her on account of the termination of service, the petitioner shall get costs of Rs. 10,000/- from the respondents. The Government shall be free to recover the same from the officer who may be found responsible for having passed wholly arbitrary order terminating the petitioner's service.