

(2011) 10 AHC CK 0062

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 75699 of 2010

Dr. Raj Bahadur Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

Citation : (2011) 10 ADJ 487

Hon'ble Judges : Sunil Ambwani, J; Dilip Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Sri GS. Srivastava, learned counsel for the petitioner. Sri Satish Chaturvedi, learned Additional Advocate General assisted by Sri S.N. Srivastava appears for the respondents.

2. By this writ petition, the petitioner has prayed for the following reliefs:

(A) Issue a writ order or direction in the nature of certiorari quashing the impugned order dated 3.5.2010 passed by the respondent No. 2 relating to the name found at SI. No. 529 (Annexure 11 to this petition).

(B) Issue a writ order or direction in the nature of mandamus commanding the respondents to decide all the leave applications, all representations of the petitioner and permit him to join the duty and pay his entire salary and all service benefits due in accordance with law and Rules.

(C) Issue, any other writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case.

3. This writ petition is directed against the Office Memorandum dated 3rd May, 2010 issued by Principal Secretary, Medical and Health, Government of U.P. terminating the services of 477 doctors in Provincial Medical Service, absenting from duties for years altogether, after making enquiries in which the Government was unable to ascertain their place of postings. Since no information was sent by

them about their absence inspite of the notice published in the national newspapers and in the official website of the Department, the State Government found that it was not reasonably practicable to hold any departmental enquiry against them. The State Government also consulted the U.P. Public Service Commission before terminating the services of absentee doctors.

4. In the present case, the petitioner was posted at Community Health Centre, Robertsganj District Sonbhadra. He submitted an application dated 8th May, 1997 that due to some personal problems he had to go to home and he would not be available on Government duty on 9th 10th and 11th May, 1997. On 12th May, 1997, he sent a application to the Medical Superintendent, C.H.C. Robertsganj that due to some health problem he is unable to return to the duties, so his leave may be extended. He assured that he will join the duties after recovery from illness. The petitioner gave a third application after two years on 29th June, 1999, requesting for permission to join duties. It was stated in the application that his father had fallen ill and, therefore, he had stayed back at Varanasi to lookafter him. Since his father was getting well, the petitioner wanted to join. The next application was given by the petitioner after 10 years on 17th August, 2009, stating that he had proceeded on leave on 8th May, 1997 and had sent information on 12th May, 1997 for extension of leave but thereafter on account of illness of his father, who had since died and the illness of his mother, he could not join duties and so necessary directions be given.

5. The petitioner did not make any representation against the termination of his service on 3rd May, 2010. He had filed Writ Petition No. 62294 of 2010 for a direction to join duties without disclosing the fact that his services were terminated. The writ petition was dismissed on 21st October, 2010 with the following observations:

Heard learned counsel for the petitioner and learned Standing counsel.

Prayer in this petition for direction to the respondents to decide the representations of the petitioner dated 12.5.2010 and permit to him to join his duty and pay his salary in accordance with law.

Submission is that petitioner went on casual leave for only three days w.e.f. 9.5.1997 to 11.5.1997 and since then he has been trying to join and running from pillar to post but no body is permitting him to join his duties. It is further submitted that there has been certain correspondence between petitioner and concerned authorities.

After hearing the argument we have perused the documents filed by the petitioner alongwith writ petition.

From the facts so stated it appears that there is no dispute about the fact that since 11th May 1997 petitioner is not on duty and thus it is clear that since about 13 years he is not able to work/join his duty as being submitted by him.

On perusal of the record we find that letter of the C.M.O. is there, besides other

documents by which an explanation has been sought from the petitioner about his unauthorized absence since 11.5.1997.

In view of the aforesaid, learned Standing counsel rightly submits that quarry from the petitioner was made and therefore, there is no question of giving any direction/permission to the petitioner to join his duty.

We are sorry to observe that period of 13 years cannot be taken too short to establish the innocence on the part of the petitioner as being pleaded before this Court.

It has been held by the Hon"ble Apex Court in C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another, that the claim which is already dead is not to be permitted to be revived.

Accordingly, writ petition fails and is hereby dismissed.

6. We do not find that the petitioner has made out any case to interfere in this second writ petition. In his earlier petition, he had concealed the fact from the Court that his services were terminated by the Office Memorandum dated 3rd May, 2010. He neither filed any review nor any appeal was filed against the judgment dismissing his writ petition. By this writ petition, the petitioner has prayed for quashing the Office Memorandum dated 3rd May, 2010, by which his service were terminated.

7. The petitioner has taken Government employment very casually. His long absence of about 13 years from the Government duties has not been sufficiently explained. A person serving in State Medical Services, is not entitled to leave for such a long period, on the grounds of illness of his family members. It is apparent from the pleadings that he was not serious to get his leave sanctioned. The State Government did not violate any statutory rules laying down the service conditions, in terminating his services.

8. The writ petition is, accordingly, dismissed.