
(2012) 10 MP CK 0104

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2863 of 2010

Dr. (Smt.) Seema Joshi (Mourya)

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Citation : (2013) LabIC 411

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Sharma, J.—The petitioner before this Court, a Doctor, has filed this present writ petition being aggrieved by the order dated 18.11.2009. The contention of the petitioner is that she is holding a Post Graduate Degree and was selected by the MP Public Service Commission for the post of Asstt. Surgeon and was posted at Community Health Centre, Chanderi, on 13.8.2002. The petitioner on account of illness proceeded on leave in the year 2003 and submitted medical certificate to the authorities on 24.6.2004. Petitioner has further stated that as her condition deteriorated, she went for advance treatment to Delhi and kept on submitting medical certificates to the authorities. Petitioner has further stated that to her utter surprise, a charge-sheet was issued on 11.2.2005 by the competent disciplinary authority and the petitioner was directed to submit a reply and the petitioner did submit a reply to the charges levelled against her. Petitioner has further stated that she was finally directed to appear before the enquiry officer and the petitioner did appear before the enquiry officer and also placed all the documents in respect of her illness before the enquiry officer. The contention of the petitioner is that the document submitted by her before the enquiry officer were not looked into and enquiry officer has held the charges established. Petitioner has further stated that the enquiry report was submitted on 20th June, 2005 and thereafter the petitioner was permitted to join by the State Government on 24.5.2006. Petitioner has further stated that she kept on

serving the State Government, however, to her utter surprise an order was passed terminating her on 18.11.2009 on account of her absence which was subject-matter of the Departmental Enquiry. The contention of the petitioner is that Departmental Enquiry has not been held keeping in view the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 and as the documents submitted by the petitioner have not been looked into in respect of her illness, the action of the respondents is violative of the principles of natural justice and fair play and, therefore, the impugned order deserves to be set aside. Other grounds have also been raised by the learned counsel for the petitioner and his contention is that the punishment is shockingly disproportionate to the guilt of the delinquent employee as a capital punishment has been inflicted upon the petitioner even though she was permitted to join after completion of the Departmental Enquiry. Learned counsel for the petitioner has prayed for quashing of order dated 18.11.2009. A reply has been filed in the matter and the stand of the respondent State is that the petitioner was absent since 10.9.2004 without any permission and without any leave sanctioned by the Department and, therefore, a notice was issued to the petitioner on 15.12.2004 seeking explanation and directing the petitioner to appear before the Medical Board. It has been stated that as no reply was received from the petitioner, a charge-sheet was issued on 11.2.2005 and thereafter the petitioner did submit a reply to the charges levelled against her. It has also been stated that after conducting the Departmental Enquiry, the enquiry officer has held the petitioner guilty of the alleged misconduct and the report was forwarded to the M.P. Public Service Commission and the M.P. Public Service Commission has also opined to impose a major punishment upon the petitioner. Respondents have stated that they have followed the prescribed procedure in accordance with law and therefore no case for interference is made out in the matter.

2. Heard learned counsel for the parties at length and perused the record.

3. In the present case, it is an admitted fact that the petitioner is holding a Post Graduate Degree and was appointed as Asstt. Surgeon by the State Government. The petitioner, as stated by her, was unwell and proceeded on leave. The charge-sheet reveals that she has been charge sheeted for remaining unauthorisedly absent w.e.f. 10.9.2004. Though the aforesaid fact has been disputed by the petitioner. There are various medical certificates on record submitted by the petitioner to the disciplinary authority and the same certify her illness and the relevant medical certificates were also placed before the Enquiry Officer. This Court has carefully gone through the enquiry report produced by the learned counsel for the respondent State dated 20.6.2012 and the same reflects that the enquiry officer has considered all the documents produced by the petitioner in her defense. All the medical certificates have been brushed aside by the enquiry officer. Not only this, the enquiry report was submitted on 20.6.2005, matter was forwarded to the M.P. Public Service Commission immediately and the M.P. Public Service Commission has given its opinion on 26.4.2006 for imposing a major punishment. The State Government took no steps thereafter and permitted the

petitioner to join duties vide order dated 24.5.2006. The petitioner submitted her joining on 6.5.2006 and continued thereafter for about 3? years. The respondents have finally passed an order on 18.11.2009 terminating the services of the petitioner.

3A. In the present case, no explanation of any kind has been offered for the delay which took place in concluding the Departmental Enquiry and passing a final order thereupon. The Departmental Enquiry was concluded on 20.6.2005, the M.P. Public Service Commission has given an opinion on 26.4.2006 and the order of termination was passed on 18.11.2009, in spite of the fact that the petitioner was permitted to resume duties on 24.5.2006.

4. This Court has carefully scanned the entire record relating to the Departmental Enquiry and as all of the certificates submitted by the petitioner were not looked into by the enquiry officer, the findings arrived at by the enquiry officer are certainly perverse findings and they are violative of principles of natural justice and fair play.

5. Resultantly, the impugned order dated 18.11.2009 and the enquiry report dated 20.6.2005 are hereby quashed. The matter is remanded back to the enquiry officer to hold a Departmental Enquiry afresh in accordance with law. Not only this, this Court is of the considered opinion that once the petitioner was permitted to join in the year 2006 and she was permitted to continue till 18.11.2009 and there is not a single complaint against her, the punishment of dismissal is certainly shockingly disproportionate to the guilt of the delinquent employee and, therefore the disciplinary authority while passing a fresh order after conclusion of the Departmental Enquiry shall keep in mind the aforesaid observation. The respondents are directed to reinstate the petitioner forthwith, however, they shall be at liberty to pass appropriate orders, as observed above, after holding the Departmental Enquiry afresh and after granting opportunity of hearing to the petitioner keeping in view the provisions, as contained in M.P. Civil Services (Classification, Control and Appeal) Rules, 1966. The writ petition stands allowed.