

(2022) 05 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14770 Of 2014

Dr. Vijaya Laxmi Kundra

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 11-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Bihar Pension Rules, 1950 — Rule 43(b), 101

Citation : (2022) 05 PAT CK 0013

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Chitranjan Sinha, Siddhartha Prasad, Surya Nilambari, Rajeshwar Singh, Niraj Kumar

Final Decision : Dismissed

Judgement

1. The petitioner has put to challenge, in the present writ application filed under Article 226 of the Constitution of India, a notification issued vide Memo No. 322 dated 05.05.2014, by the Department of Health, Government of Bihar, whereby punishment of stoppage of full pension has been imposed upon the petitioner, in exercise of powers under Rule 43(b) of Bihar Pension Rules, 1950.

2. Heard Mr. Chitranjan Sinha, learned Senior Counsel assisted by Mr. Siddhartha Prasad and Ms. Surya Nilambari, learned Advocates and Mr. Rajeshwar Singh, learned GA-10 with Mr. Niraj Kumar, learned AC to GA-10.

3. The short facts leading to issuance of the impugned order are that the petitioner, at the relevant point of time, was posted as a Lady Medical Officer in MJK Hospital, Bettiah. On the charge of misconduct in the nature of her unauthorised continuous absence from duty since 1994, a departmental proceeding was initiated against her on 04.02.2003. The Enquiring Authority found the charge of misconduct against the petitioner of her unauthorised absence from 1994 to 07.01.1999 proved. A second show cause notice was issued to the petitioner with the enquiry report giving her opportunity to

comment upon the said finding in the enquiry report. The petitioner had submitted her reply on 12.06.2004. Subsequently, the Disciplinary Authority, agreeing with the findings recorded by the Enquiring Authority and upon obtaining concurrence of Bihar Public Service Commission decided to impose punishment of dismissal from service and accordingly vide the Health Department's resolution No. 675(9) dated 01.12.2005, the petitioner was dismissed from service.

4. The petitioner challenged the order of dismissal before this Court by filing a writ petition giving rise to CWJC No. 6787 of 2008. On the technical ground that the second show cause notice issued to the petitioner was vague, inasmuch as, it did not clearly disclose the opinion of the Disciplinary Authority as regards finding in respect of charge against the petitioner, this Court held that a vague show cause notice could not be the basis for imposing punishment of dismissal from service. This Court held that there had been violation of principles of natural justice by not communicating to the petitioner a clear finding in respect of the charge framed against her. The memo of charge has been brought on record by way of Annexure-8, which is dated 04.02.2003.

5. It is alleged in the charge memo that the petitioner was absent continuously since 1994, unauthorisedly. The petitioner submitted her written statement of defence. From the report of the Enquiring Authority (Annexure-7 to the writ petition) it appears that the petitioner took a plea that she had proceeded on casual leave for five days after making an application on 16.08.1994 because of her indisposition and thereafter she kept on applying for extension of leave by subsequent communications sent through UPC. She submitted prescriptions in support of her ailment written by Dr. M. Shukla, a Civil Assistant Surgeon posted in the same MJK Hospital, Bettiah, whereby she was advised bed-rest. She also took a plea that on 08.01.1999 she had submitted her joining, whereafter the Superintendent of the Hospital had written to the Commissioner-cum-Secretary, Health Department, Government of Bihar for adjusting the petitioner's posting against the post of Lady Medical Officer in PP Programme, in the same hospital.

6. The Presenting Officer did inform the Enquiring Authority that there was no report to substantiate the petitioner's claim to the effect that any communication was made for adjusting the petitioner's posting at MJK Hospital. There is a finding in the enquiry report to the effect that pursuant to a press communique dated 01.02.2002 the petitioner had submitted her joining on 01.02.2002 and again on 16.08.2002 before the Superintendent, MJK Hospital, Bettiah. Subsequently by a notification dated 04.02.2003 issued by the Health Department, Government of Bihar she was placed under suspension. The Enquiring Authority recorded in his report that the petitioner proceeded for leave on 16.08.1994 and pursuant to a press communique she submitted her joining on 08.01.1999 at the place of her previous posting i.e. MJK Hospital, Bettiah. He, however, opined that if there was no direction received from the Department for adjusting the petitioner at MJK Hospital, Bettiah, she should have been relieved

for joining in the department.

7. As has been noted hereinabove, the petitioner was put to second show cause notice which she replied through her letter dated 12.06.2004. Thereafter the order dated 01.12.2005 came to be passed by the department dismissing the petitioner from service. The petitioner had preferred an appeal against the order of dismissal, which came to be rejected by the competent authority by an order dated 12.11.2007. In the meanwhile, the petitioner attained the age of superannuation on 13.09.2007. The aforesaid two orders were set aside by this Court's order dated 22.07.2011, passed in CWJC No. 6787 of 2008. This Court while allowing the petitioner's writ application made the following significant observations :-

"The facts do show that the petitioner has hardly any convincing explanation for her absence from duties for more than five years without any validly sanctioned leave." (emphasis)

8. The writ petition was allowed with the following observations and directions :-

"In the circumstances, in view of this vague second show cause notice and enquiry report without any findings, petitioner was not required to explain her conduct further. As such, this vague enquiry report and vague second show cause notice could not be the basis for issue of punishment order against the petitioner terminating her services. Clearly, there has been infraction of Principles of Natural Justice in the case by not communicating the petitioner a clear finding in respect of the charge framed against her giving her opportunity to meet the finding.

In the circumstances, punishment order as contained in Annexure-14 and the appellate order as contained in Annexure-17 are quashed. The matter is remitted back to the Disciplinary Authority with liberty to him to issue fresh second show cause notice to the petitioner or to take any other step as he may consider appropriate, in the proceeding in accordance with law.

It is made clear that on account of quashing of the impugned order of termination and the appellate authority, petitioner shall be treated as under suspension from the date of termination order itself."

9. In compliance of this Court's order dated 22.07.2011, the Health Department, Government of Bihar issued fresh second show cause notice dated 04.05.2012, which has been brought on record by way of Annexure-20 to the writ application. The said second show cause notice dated 04.05.2012 clearly indicates the opinion formed by the Disciplinary Authority in relation to the charge framed regarding her unauthorised absence from August 1994. The Disciplinary Authority clearly recorded its opinion to the effect that the petitioner unauthorisedly remained absent from 16.08.1994 to 07.01.1999 and 09.01.1999 to 16.08.2002.

10. In reply to the said second show cause notice the petitioner submitted her

reply reiterating that she had left the hospital on casual leave for five days on 16.08.1994 but because of her indisposition she had to remain absent for a long period. She asserted that on 08.01.1999 she had submitted her joining and thus she was on leave from 16.08.1994 to 07.01.1999. She asserted in her reply that despite communication made by the Superintendent of Hospital to the Health Commissioner for adjusting the petitioner's service at MJK Hospital Bettiah, no guideline was received either from the Health Department or from the level of the Superintendent, by her. She blamed the Health Department for not acting promptly after submission of her joining in 1999, in her reply to the second show cause notice.

11. After noticing her name in the press communique dated 01.02.2002, she submitted her joining and on the basis of oral direction of the Health Department she again submitted her joining at MJK Hospital Bettiah. This time also she was not allowed to register her attendance. Subsequently, she was placed under suspension. She accordingly pleaded that her absence from duty was justified in view of the situation as explained in her reply.

12. After considering the petitioner's reply to the second show cause notice, the department asked her to submit evidence in support of her stand that she had submitted her joining on 08.01.1999 and the steps taken by her to communicate with superior authorities for assignment of duties. Dealing with her plea in her reply to the second show cause that she had stopped going to the hospital after sometime, she was asked by the Disciplinary Authority to disclose since when she had stopped visiting the hospital. The petitioner again submitted her reply on 24.09.2012.

13. It is the petitioner's case that as no action was being taken by the authorities to conclude the departmental proceeding, she approached this Court by filing a writ petition giving rise to CWJC No. 6784 of 2013. The said writ petition came to be disposed of by an order dated 03.05.2013 with a direction to the Disciplinary Authority to conclude the disciplinary proceeding, if not already concluded, within a period of two months. The impugned order has finally been passed on 28.04.2014 imposing punishment of withholding of 100% of pension.

14. Mr. Chitranjan Sinha, learned Senior Counsel appearing on behalf of the petitioner has contended that the impugned action of imposition of harshest of the punishments of forfeiting full pension is disproportionate to the misconduct said to have been proved. He has relied on a Single Bench decision of this Court in case of Nandjee Mehta vs. The State of Bihar & Ors. reported in 2017(1) PLJR 753 and a Division Bench decision of this Court rendered on 30.03.2016 in LPA No. 131 of 2013 (The State of Bihar & Ors. vs. Narmadeshwar Sharma and Anr.). He has submitted, relying on the aforesaid decisions, that pension earned by the petitioner during all these long years of service could not be obliterated so lightly, in the evening of the petitioner's life. He contends that the punishment of withholding of 100% of pension is shockingly disproportionate to a former employee, even on the ground of proved misconduct.

15. I have carefully perused the pleadings and materials on record. It is to be noted that the petitioner has brought on record medical prescriptions by way of supplementary affidavit filed in this case in support of her stand that she was absent from service on account of genuine reasons. From the said supplementary affidavit, it is evident that the petitioner's defence for her unauthorised absence is her indisposition, for which, according to her, she was undergoing treatment in a private clinic of a doctor who was posted in the same MJK Hospital, Bettiah. The petitioner herself admits that she remained absent from 16.08.1994 till 07.01.1999 because of her ailment. It is her case that she was suffering from Pulmonary Tuberculosis, Poly arthritis and Bronchial Asthma. It is her own case that nearly four and half years after she had left the hospital, she had submitted her joining in MJK Hospital, Bettiah on 08.01.1999. She has relied on a copy of the communication dated 09.01.1999 made by the Superintendent of Hospital addressed to the Commissioner-cum-Health Secretary, Government of Bihar requesting adjustment of the petitioner's posting against the then vacant post of Lady Medical Officer in PP Programme. Nowhere the petitioner has asserted that the post, against which she was working before going on leave, was vacant when she had submitted her joining. Her unauthorised absence, from 5 days (period of casual leave) after 16.08.1994, till she is said to have submitted her joining on 08.01.1999 is an admitted fact. The finding recorded by the Disciplinary Authority regarding petitioner's unauthorised absence for the said period cannot be said to be suffering from any infirmity. The petitioner's justification for her absence during the said period has rightly been rejected by the Disciplinary Authority. The petitioner's plea that one fine morning on 08.01.1999 she submitted her joining and thereafter again disappeared in the absence of any direction issued by the Superintendent of the Hospital or the Health Department, in Court's opinion, is thoroughly obnoxious. Instead of introspecting her own conduct, the petitioner has blamed in the writ petition the Superintendent of the Hospital and the department for not issuing any direction after submission of her joining on 08.01.1999.

16. On the basis of what has been asserted in the pleadings of the petitioner, it can be easily inferred that the petitioner, while posted as a lady doctor in MJK Hospital, Bettiah left on 16.08.1994 for five days on casual leave. If her case is to be accepted, she joined on 08.01.1999 and thereafter again she remained absent. I do not intend to go into the question as to whether the petitioner had submitted her joining on 08.01.1999 or not.

17. Mr. Chitranjan Sinha, learned Senior Counsel in his submission has taken a line of least assistance and has addressed this Court mainly on the point of disproportionality of punishment imposed while placing reliance on the decisions of this Court in case of Nandjee Mehta (supra) and Narmdeshwar Sharma (supra).

18. In the peculiar facts and circumstances of the present case, the submission so advanced by Mr. Chitranjan Sinha, learned Senior Counsel has failed to persuade me.

19. As has been noted above, on the basis of the same departmental enquiry and the report of the Enquiring Authority the petitioner was dismissed from service in February, 2005. Her appeal was also rejected in 2006. Rule 101 of the Bihar Pension Rules stipulates that dismissal from service for misconduct shall entail forfeiture of past service for the purpose of grant of pension. The order of dismissal was interfered with by this Court on technical ground of second show cause notice issued to the petitioner being vague and containing no clear opinion of the Disciplinary Authority. The said requirement has subsequently been complied with in the light of the observations made by this Court in the order passed in CWJC No. 6787 of 2008.

20. It is a case where the punishment has been imposed by the Disciplinary Authority on a medical professional posted in a government hospital on the ground of her unauthorised absence. The finding that the petitioner remained absent unauthorisedly without any acceptable justification, in the Court's opinion, cannot be said to be without any basis or on the basis of materials which are irrelevant. The said finding is rather based on cogent materials and admitted facts.

21. It is noteworthy that after having perused the enquiry report, the second show cause notice, the petitioner's reply to the second show cause and the order of dismissal, this Court in its order dated 22.07.2011 in CWJC No. 6787 of 2008 had clearly recorded that the petitioner had hardly any convincing explanation for her absence from duties for more than five years without any validly sanctioned leave. I do not find any reason to take a different view than what was taken by this Court in the said order dated 22.07.2011.

22. In the Court's opinion, unauthorised absence of a doctor posted in a government hospital without any valid justification is a gross misconduct. The gravity of the consequence of unauthorised absence of a doctor from a government hospital cannot be underestimated while taking a call on the point of punishment for such misconduct. In my opinion, absence of a doctor in a government hospital/ dispensary leaves the patients requiring medical attention in great jeopardy, which immensely hampers public interest. The plight of unattended, inadequately attended patients in need in a government hospital because of continuous, uncertain absence of a doctor cannot be lost sight of.

23. The petitioner, despite being a medical professional, chose to remain absent from duty for years together without any duly sanctioned leave, which must have prevented the administration from making alternative arrangements because of the uncertainty to meet this situation arising out of petitioner's absence. The petitioner miserably failed to demonstrate that after five days of causal leave which she had taken, she made any sincere effort to inform the administration about her likely absence from duties. Considering the potential of harm which can be caused by sudden absence of a doctor from government hospital without any authority for years together, in my opinion, the decision of the State Government to forfeit 100% of pension cannot be said to be so unreasonable in

the facts and circumstances of the case, which would require this Court's interference in a proceeding under Article 226 of the Constitution of India, which is an equitable discretionary remedy.

24. This Court, in exercise of writ jurisdiction is required to balance the competing public interest and an individual interest. A writ Court in its discretion may decline to exercise its jurisdiction once the Court is satisfied that there has been no failure of justice.

25. This Court is mindful of the position that nature of misconduct of an employee under the State from the perspective of gravity varies, depending much on consequence of an act or omission constituting such misconduct. A conduct of absence from duty of an employee in civil establishment may not be as grave as that of an army personnel leaving his post unauthorisedly. Similarly, in case of a bank employee the Supreme Court has held in case of *State Bank of India vs. Bela Bagchi* reported in (2005) 7 SCC 435 that a Bank Officer to exercise higher standards of honesty and integrity as he deals with the money of the depositors and the customers. Every officer/ employee of a bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer.

26. The position of a Doctor posted in a government hospital carries no less responsibilities, rather more than an officer of a bank. The proved charge of petitioner's unauthorised absence for more than four and half years cannot be treated to be casual in nature. Further, plea of the petitioner based on medical prescriptions of a doctor of the same hospital does not inspire much confidence. In any view of the matter, I am not inclined to interfere with the impugned order in present proceeding under writ jurisdiction after having noticed the admitted facts regarding the petitioner's absence from duty without any sanctioned leave.

27. In the court's opinion, in the facts and circumstances of the present case, the decisions rendered by this Court in case of *Nandjee Mehta* (supra) and *Narmdeshwar Sharma* (supra) do not apply.

28. In view of the aforesaid discussions, in my opinion, this writ petition is devoid of any merit, which is accordingly dismissed.

29. No order as to costs.