

(2008) 08 AHC CK 0061
In the Allahabad High Court

Smt. Lila Vishwakarma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Citation : (2008) 119 FLR 475

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Shri Anil Kumar Sharma, learned Counsel for the petitioner and Shri Mohan Yadav, learned Standing Counsel for respondents.

2. The petitioner has filed the present writ petition praying that the respondents be restrained from interfering with the peaceful working of petitioner as A.N.M. at Prathmik Swasthya Kendra, Chail in District Allahabad and that a writ of mandamus be also issued directing the respondents to pay the salary and arrears of salary along with 12% interest since August, 2003 onwards.

3. The facts leading to the filing of the writ petition is, that the petitioner was appointed as A.N.M. in the year 1981 and since then is working in the Primary Health Centre at Chail in District Allahabad. On 23rd July, 2003, the petitioner was transferred from Chail to Kada and was directed to hand over the charge to Smt Suman Dwivedi, who was posted on that place in her place. The petitioner made a representation for the cancellation of her transfer order on personal ground, which was duly considered by the authority, and by an order dated 4th September, 2003, the transfer order of the petitioner was cancelled, and she was allowed to work at the place where she was originally working, namely, Primary Health Centre, Chail in District Allahabad (now District Kaushambi). As a result of the cancellation of the transfer order, the petitioner remained at Chail. It has also come on record that during the pendency of the petitioner's representation, she did not hand over the charge to Suman Dwivedi, though the learned Counsel for

the respondents, on the other hand, submitted that Suman Dwivedi was allowed to join at Chail.

4. The problem arose when the petitioner and Suman Dwivedi started working at the Primary Health Centre at Chail. Whereas, Suman Dwivedi was paid her salary, the petitioner was not paid her salary. The petitioner made a representation, which fell on deaf ears. It is alleged in the writ petition that the petitioner was threatened with dire consequences by respondent Nos. 5 and 7, namely, by the then Chief Medical Officer and the Medical Officer In-charge I, respectively. It has been stated that subsequently the Chief Medical Officer issued an order dated 1st November, 2003/4th November, 2003 directing that the petitioner would be paid the salary from PHC, Chail and that Smt Suman Dwivedi, who was earlier working at PHC, Nevada, would draw her salary from that Centre alone. This suited the petitioner, but subsequently, without any rhyme or reason, the Chief Medical Officer reversed its order and issued a fresh order dated 12th of December, 2003 directing that Suman Dwivedi will receive her salary from the Primary Health Centre, Chail and that the petitioner should approach the authority at the Public Health Centre, Nevada for release of her salary. This order was not accepted by the petitioner, and consequently, the stalemate continued. The petitioner continued to discharge her duties at Chail and the authorities remained adamant not to release her salary and insisted that the petitioner should open an Account in a Bank at Nevada so that her salary could be released from Primary Health Centre, Nevada.

5. In this manner, the situation continued, and eventually, the petitioner approached the writ Court in the year 2004. The Court by an interim order dated 7th September, 2005, directed the respondents to show cause why salary to the petitioner had not been paid for two years. The Court further directed respondent Nos. 4 and 5 to file their personal affidavit, in spite of which, the respondent No. 5 did not file his personal affidavit. However, on 21st September 2005, the respondents produced two treasury cheques for a sum of Rs. 48350/- and another for Rs. 50100/- and 3 cheques drawn on Bank of Baroda, Branch Nevada, District Kaushami for a sum of Rs. 51942/-, 8350/- and 25490/- towards the arrears of salary payable to the petitioner. The order sheet of 13th October, 2006 further records that the respondents produced three cheques from the Nevada Branch, total Rs. 2,40,023/- towards the arrears of salary and again impressed upon the Court praying that the petitioner should open an Account in Nevada so that her salary could be deposited in that Account.

6. This matter was taken up in August, 2008 and the same thing was reiterated all over again, namely, that the petitioner has not been paid the salary from September, 2006 onwards. The learned Standing Counsel sought instructions and again intimated the Court that the salary has not been paid to the petitioner on account of the fact that the petitioner has not opened an Account in Bank in Nevada in district Kaushambi, and therefore, the salary could not be deposited in her Account. On 27th August, 2008 the respondents produced three cheques

drawn from the Nevada Branch for a sum of Rs. 19900/-, 113130/- and 88085/- towards arrears of salary for the period September, 2006 to April, 2008.

7. This is the situation which exists as on date. The admitted position which stands today is that the petitioner is still working at Chail which is now in district Kaushambi. Therefore, she is entitled to be given the salary from the Primary Health Centre, Chail. The insistence of the respondents to disburse the salary of the petitioner from Primary Health Centre, Nevada is apparently arbitrary and without jurisdiction. The petitioner has never worked at any moment of time at the Primary Health Centre, Nevada. This centre is also 20-30 kilometres away from this Primary Health Centre, Chail. It does not stand to reason as to why the petitioner should open an Account at Nevada when the petitioner has neither worked at that place, nor is residing at that place, nor had been transferred to that place. If for any administrative convenience the respondents are disbursing the salary from the Primary Health Centre, Nevada, it is their own internal arrangement, in which, the petitioner has no role to play and the petitioner cannot be forced to open an Account at Nevada on the whims and fancies of the respondents merely because it is convenient for the respondents to disburse the salary from Nevada.

8. On the other hand, the order of 4th November, 2003 gives a clear indication of the internal arrangement made by the respondents, namely, that the petitioner was already working at Allahabad and, therefore, she would continue to withdraw her salary from Chail, and that Suman Dwivedi, who was earlier working at Nevada, would continue to draw her salary from Nevada. But, this arrangement was reversed by the respondents by an order dated 12th December, 2003 which is indicative and it can be safely presumed that the said order was passed either to benefit someone or to harass the petitioner. In view of the aforesaid, the insistence of the respondents directing the petitioner to draw salary from Nevada and further insisting the petitioner to open an Account in Nevada, is patently arbitrary, and, in my opinion, a clear cut case of harassment is made out against the petitioner, for reasons best known to the respondents. It is alleged by the petitioner that this arrangement was specifically made in order to ensure that Suman Dwivedi remains posted at Chail and is paid the salary from that centre. Without going into this controversy, it is sufficient for the Court to hold that when the transfer order of the petitioner was cancelled and she was directed to work at Chail, the respondents should have passed another consequential order for the placement of Suman Dwivedi. The respondents, in any case, could not have forced the petitioner to draw salary from Nevada, the place where she had never worked, nor had she been transferred to that place. Consequently, the action of the respondents is a clear indication of vindictive attitude against the petitioner and indicates favouritism given to Suman Dwivedi who was transferred to Chail.

9. The Court finds that during the pendency of the writ petition, no effort was made by the respondents to solve this imbroglio made by the respondents. No effort was made by the respondents to evolve an amicable solution. The

respondents remained adamant, insisting that the petitioner should open an Account in Nevada and only then she would be paid her salary. The respondents have paid the arrears of salary to the petitioner by cheque through the Court, and that too, only when the Court, directed the respondents to do so. A clear case of arbitrariness on the part of the respondents is spelt out. The action of the respondents cannot be condoned. This Court had asked the learned Standing Counsel as to why the arrears of salary till April, 2008 had only been cleared and why the salary for May, June and July, 2008 had not been released. The learned Standing Counsel submitted that in this regard, the salary for these months had not been received from the State Government, and therefore, no salary could be disbursed.

10. In view of the aforesaid, the writ petition is allowed. A writ of mandamus is issued to the respondents directing the petitioner to work at the Primary Health Centre, Chail and would be entitled to draw her salary from the Primary Health Centre, Chail. The respondents will ensure that the salary is released and paid to the petitioner every month or credited in her account at Chail. The arrears of salary from May, 2008 till date would also be cleared within four weeks from today.

11. For the harassment caused to the petitioner and for the non-payment of the arrears of salary, the petitioner has made out a case for grant of cost and payment of interest on the delay in payment of the salary. The petitioner has claimed cost as well as 12% interest on arrears of the salary from September, 2003 onwards was not paid and was only cleared when the Court directed. If a reasonable rate of interest at the rate of 6% is charged, approximately Rs. 40,000/- would come towards interest. This Court, consequently, quantifies a sum of Rs. 40,000/- as interest and cost of this petition at Rs. 10,000/-. The amount of Rs. 50,000/- shall be paid to the petitioner by means of a cheque/pay order/demand draft in favour of the petitioner within four weeks from today or may be credited in her Account. If the amount is not paid to the petitioner within the said period, it would be open to the petitioner to move an appropriate application for the execution of the order. Since the respondents were responsible for not paying the salary to the petitioner, the Secretary, Department of Health, Lucknow is consequently directed to hold an enquiry and recover the cost and interest from the erring officials.