

(2010) 11 AHC CK 0394

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 45893 of 2008

Smt. Mithilesh Kumari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 161

Citation : (2011) 1 ADJ 40

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—This case is a straight example of the skill of the administrative authorities in twisting the facts and to make this Court and its judgments a tool to accomplish their vicious objectives and goal.

2. Apparently the prayer made by the Petitioner is a simple one, i.e., a mandamus commanding the Respondent No. 2 to pay the entire arrears of salary to the Petitioner as earlier as possible. The writ petition has eleven paragraphs and five grounds.

3. In nutshell, salary has been claimed for the period of 27.6.2006 to 14.8.2008. However going a little bit deeper one would find the reason for non-payment of salary for the aforesaid period. It appears that the Petitioner was working as an Attendant at District Women Hospital, Etawah. Wherefrom she was shifted in the same city to District Hospital vide transfer order dated 27.6.2006 passed by Sri M.P. Bansal, Director (Medical Care). The Petitioner did not join at the place of transfer and continue to mark her attendance at District Women Hospital, Etawah which was objected by the Chief Medical Superintendent, Dr. B.R. Ambedkar Joint Hospital (Women), Etawah. The Petitioner was directed to submit her joining at District Women Hospital, Etawah.

4. The Petitioner has approached this Court by means of the Writ Petition No. 14771 of 2007 seeking following reliefs:

- i. issue a writ, order or direction in the nature of certiorari quashing the impugned transfer order dated 1.12.2007 passed/issued by the Respondent No. 2 (Annexure-1 to this writ petition).
- ii. issue a writ, order or direction in the nature of mandamus directing the Respondents not to compel the Petitioner to join at the transferred place.
- iii. issue any other suitable writ, order or direction which this Hon"ble Court may deem fit and proper under the facts and circumstances of the case.
- iv. to award the cost of the petition.

5. The writ petition came up before this Court on 20.3.2007 when it was dismissed with the following order:

Heard learned Counsel for the Petitioner as well as learned Standing Counsel appearing for the Respondents and have perused the record.

By means of the impugned order dated 1.12.2006 the compliance of the transfer order passed against the Petitioner on 3.11.2006 is being sought.

The Petitioner has not filed the original transfer order. In my view, in the absence of the transfer order having been filed, the order impugned in this writ petition i.e. dated 1.12.2006 cannot be interfered with.

This writ petition is, accordingly, dismissed. However, liberty is given to the Petitioner to file a fresh writ petition challenging the main order of transfer.

No costs.

6. Thereafter she again came to this Court in Writ Petition No. 17680 of 2007. The aforesaid writ petition was dismissed with costs of Rs. 5000/- observing that it was an abuse of the process of the Court. The judgment dated 7.5.2008 of this Court dismissing the aforesaid writ petition reads as under:

After the matter was argued at some length, learned Counsel for the Petitioner prays for and is permitted to withdraw the writ petition with an undertaking that he will deposit a cost of Rs. 5,000/-on his own, inasmuch as the Court was of the prima facie opinion that at the initial stage itself the present writ petition was an abuse of the process of this Court. However, no orders are required to be passed in view of the said statement.

In view of the undertaking given by the learned Counsel for the Petitioner, this writ petition is dismissed as withdrawn with a cost of Rs. 5,000/-. The cost so imposed must be deposited by the Petitioner through a bank draft drawn in favour of Registrar General of this Court within one month from today, failing which the District Magistrate concerned shall ensure recovery of the said amount of Rs. 5,000/-as arrears of land revenue and shall transmit the money so

collected to the Registrar General. The cost so recovered shall be placed in the accounts of High Court Legal Service Committee, Allahabad.

7. It appears that on 8.7.2008, the Petitioner made a representation before the Director (Medical Care), Lucknow giving reference of filing of the Writ Petition No. 17680 of 2007 against the order of transfer and requesting that she should be instructed afresh about her joining. She also said that the Chief Medical Officer, Etawah by order dated 14.8.2007 has transferred Smt. Shashi Chaudhary and Smt. Kamlesh Kumari from Community Health Center, Bharthana to Women Hospital, Etawah and Smt. Roopa Saxena and Smt. Mridula Sachan from Community Health Center, Bharthana and Community Health Center, Jaswant Nagat to T.B. Hospital, Etawah at his own level. She requested that the Chief Medical Officer's order dated 14.8.2007 be cancelled and the Petitioner be allowed to stay/absorbed at Women Hospital, Etawah.

8. The Director (Medical Care) thereupon passed the impugned order dated 14.8.2008 observing that in respectful compliance of this Court's judgment dated 7.5.2008 in Writ Petition 17680 of 2007, the transfer order dated 27.6.2006 in respect to the Petitioner is being cancelled and the Chief Medical Officer/Additional Director are instructed not to pass transfer orders at their own level. It is after this order and taking advantage thereof the present writ petition has been filed seeking a writ of mandamus for payment of salary for the entire period, from 27.6.2006 to 14.8.2008, since during this entire period the Petitioner stayed away and did not perform any work at all at any other place and now is claiming salary on the ground that the transfer order having been cancelled she is entitled for payment of salary for the entire period.

9. A counter-affidavit has been filed on behalf of Respondent No. 2 stating that the claim of Petitioner for payment of salary from 27.6.2006 to 14.8.2008 is not correct inasmuch as the actual period during which she has not performed any work is 15.11.2006 to 17.8.2008. She was relieved from the charge of Staff Nurse on 15.11.2006, pursuant to transfer order dated 27.6.2006, but she did not join her duty at District Hospital, Etawah till 17.8.2008. When the order of transfer was cancelled, she resumed her duty at District Women Hospital, Etawah on 18.8.2008 and has been paid salary thereafter regularly. It is also said that she is not entitled for salary from 15.11.2006 to 17.8.2008 as she was absent from duty, on the principle of "no work no pay".

10. While hearing the matter this Court found that there was neither any direction issued by this Court in its judgment dated 7.6.2008 that the Director (Medical Care) should pass any fresh order nor to entertain any representation of the Petitioner against the order of transfer dated 27.6.2008 yet how and in what circumstances the Director (Medical Care) made such observations in his order dated 14.8.2008, in order to base his cancellation order on the High Court's judgment particularly when this Court has dismissed the writ petition with costs observing that it was an abuse of the process of the Court. Learned Standing Counsel felt difficulty in explaining the circumstances and in these circumstances

this Court passed the following order on 27.10.2010:

Heard learned Counsel for the Petitioner and learned Standing Counsel for the Respondents.

The Petitioner's earlier writ petition against the transfer order was dismissed with costs vide Court's order dated 7.5.2008 and admittedly the Petitioner was not granted any relief and this order also nowhere shows that the Petitioner was granted any liberty by this order.

It appears that the Petitioner made representation alongwith the certified copy of the order whereupon Shri P.N. Srivastava, Director, Medical Care has passed the order dated 14.8.2008 wherein he has referred to the High Court's order dated 7.5.2008 as if it gives any direction to him to cancel the Petitioner's termination order dated 27.6.2006, though that is not so. Admittedly, this order appears to be a collusive order passed by Shri P.N. Srivastava under the garb of directions of this Court though no such directions have been issued. This is apparently not only a case of misleading the Court but also amounts to abuse of Court's order wherein the authorities pass whimsical order giving colour under the order of the Court.

Let Shri P.N. Srivastava, Director, Medical Care who has passed the impugned order appear before the Court on 18.11.2010 to explain as to how he has passed the order dated 14.8.2008 giving colour under the Court's order dated 7.5.2008.

List on 18.11.2010. A copy of this order shall be given to Shri Hemant Kumar, learned Standing Counsel for communication to Shri P.N. Srivastava.

A copy of this order shall be made available to the learned Standing Counsel within 48 hours.

11. Pursuant to the order dated 27.8.2010, Sri P.M. Srivastava, the then Director (Medical Care), who had passed the order dated 14.8.2008 cancelling the transfer of the Petitioner made on 27.6.2006, is present before the Court. He admitted that the judgment dated 7.5.2008 passed by this Court had not been seen by him when he passed the order dated 14.8.2008. He also stated that he could not understand the facts of the matter and after obtaining departmental legal advise, the order dated 14.8.2008 was passed. In support of his statement he filed a compliance affidavit stating that he has retired from service on 30.6.2009. He referred to an application dated 26.5.2008 submitted by the Petitioner stating that she was transferred on 3.11.2006 where against she filed Writ Petition No. 17680 of 2007 but due to delay in its disposal has withdrawn it and, therefore, now she be allowed to join again. The application dated 26.5.2008 referred to appending a copy of the judgment dated 7.5.2008 in Writ Petition No. 17680 of 2007. Sri P.M. Srivastava, did not dispute that such judgment was actually appended to the aforesaid application and, therefore, it was available for perusal of the said authority. Yet, however it referred to the High Court's judgment dated 7.5.2008 in order to justify cancellation order. He,

however, tried to place certain file nothings as Annexure-CA-4 but despite the best efforts could not find there from anything to suggest that such an action could have been taken by any person of ordinary prudence what to talk of an officer holding such a high post. The noting in Annexure-CA-4 also shows that while suggesting for deferring the Chief Medical Officer's order dated 14.8.2007, it was mentioned therein that in case the Petitioner's transfer is modified by permitting her to continue at District Women Hospital, Etawah, the pending writ petition at Allahabad High Court can also come to an end though admittedly on 18.7.2008 when the noting is said to have been made, no such writ petition was pending before this Court since having already been dismissed on 7.5.2008. The judgment was also available in the records of the Respondents on that date being appended to the application dated 26.5.2008 (Annexure-CA-1 to the counter-affidavit) which the Petitioner submitted in the office of the Director General, Medical and Health Services, U.P., Lucknow. Even the Joint Director made a noting that the matter can be referred to the settlement forum. The last noting shows that she was directed to be posted according to the directions of the High Court.

12. It appears that every person subordinate to the Petitioner while making the aforesaid nothings proceeded blindly without even caring to the judgment dated 7.5.2008 of this Court which is self speaking and admits of no ambiguity or confusion. Even the letter dated 14.8.2007 of Chief Medical Officer which was referred in Annexure-CA-4, do not appear to have anything to do with the Petitioner inasmuch as by the said letter two other staff nurses were transferred from Bharthana to Women Hospital, Etawah and did not say anything about the Petitioner.

13. Learned Standing Counsel having failed to justify the basis on which the order dated 14.8.2008 was passed could only submit that the then Director (Medical Core), Sri P.M. Srivastava, now having retired on 30.6.2009, this Court should extend its magnanimity by excusing him and may close the chapter. He says that Sri P.M. Srivastava, Director (Medical Care) who passed the order dated 14.8.2008, had no mala fide intention or extraneous consideration and, therefore, the matter may not be proceeded further. He, however admits that for almost two years, i.e., a little less than two years, the Petitioner did not discharge any duty whatsoever and yet no authority ever took this matter seriously or tried to proceed against the Petitioner departmentally, but, instead, using the High Court's judgment dated 7.5.2008 as a shield, not only cancel the order of transfer but tried to give it a colour as if in compliance of the judgment of this Court something has been done so that on further scrutiny on the administrative side no one may dare to raise any finger and the lapses on the part of those persons and may stay covered under a sheet in the name of Court case.

14. Learned Counsel for the Petitioner submits that whatever may be the case, the fact remains that the correctness and validity of the order dated 14.8.2008 is

not in dispute in the present case. The said order having been passed by the competent authority, i.e., Director (Medical Care), this Court cannot go behind it and has to proceed as the facts stand and taking the situation as it is, i.e., the transfer has been cancelled by the competent authority on 14.8.2008, this Court must consider as to why the Petitioner should not be given salary for the period she could not work at District Women Hospital, Etawah for no fault of her.

15. The submission, though a little bit attractive, but it ignores the facts that the Petitioner is invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. While issuing a writ of mandamus this Court has to satisfy itself that there exist a lawful and valid legal right of the Petitioner and the authorities are under a corresponding obligation to act or omit something and only thereafter such a mandamus can be issued.

16. In *Oriental Bank of Commerce Vs. Sunder Lal Jain and Another*, the Apex Court after referring to its earlier judgments in *The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others*, *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, and *Dr. Umakant Saran Vs. State of Bihar and Others*, observed as under:

There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate Tribunals and officer exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance....

17. This also includes within its ambit the conduct of the parties whether the Petitioner has approached this Court with clean hands, whether the parties are acting bona fide, whether some kind of illegal and unlawful, if not by apparent, collusion apparent in the matter, but then something with an aim and object to confer an undue advantage on the Petitioner or other party and whether the person who seeks equity himself/herself is guilty of not doing equity by indulging in unfair and inequitable activities or whether it is an apparent case of fraud or misrepresentation.

18. To my mind, first, the principle of malice in law and then fraud and misrepresentation will apply in this case. Here is a case where the Petitioner with the support of certain officials of the Respondents has been able to obtain a beneficial order in the garb of compliance of the judicial order though no such order was given by any Court of Law. Thereby, he has approached this Court to get such order implemented in all respects, in the present case, the consequential effect in the form of salary. It can be said to be something close to

misrepresentation, fraud or collateral exercise of power, of which the Petitioner is the beneficiary. Prima facie it must be treated to have been done for collateral purposes and covered by the term "malice in law".

19. The Apex Court has summarized "malice in law" in Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, as under:

It is equally true that there will be an error of fact when a public body is prompted by a mistaken belief in the existence of a non-existing fact or circumstance. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience, and as things go, these may well be said to run into one another. (Para 8)

20. The Apex Court further in para 9 of the judgment in S.R. Venkataraman (supra) observed:

9. The influence of extraneous matters will be undoubted where the authority making the order has admitted their influence. It will therefore be a gross abuse of legal power to punish a person or destroy her service career in a manner not warranted by law by putting a rule which makes a useful provision for the premature retirement of Government servants only in the "public interest", to a purpose wholly unwarranted by it, and to arrive at quite a contradictory result. An administrative order which is based on reasons of fact which do not exist must, therefore, be held to be infected with an abuse of power.

21. In Mukesh Kumar Agrawal Vs. State of U.P. and Others, the Apex Court said:

We also intend to emphasize that the distinction between a malice of fact and malice in law must be borne out from records; whereas in a case involving malice in law which if established may lead to an inference that the statutory authorities had acted without jurisdiction while exercising its jurisdiction, malice of fact must be pleaded and proved.

22. In Somesh Tiwari Vs. Union of India (UOI) and Others, dealing with the question of validity of an order of transfer on the ground of malice in law, the Apex Court in para 16 of the judgment observed as under:

16..... Mala fide is of two kinds-one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e on the allegations made against the Appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

23. In H.M.T. Ltd. rep. by its Deputy General Manager (HRM) and Another Vs.

Mudappa and Others, , the Apex Court in paras 18 and 19 defined malice in law by referring to "Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989" as under:

The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite". It is a deliberate act in disregard of the rights of others.

19. It was observed that where malice was attributed to the State, it could not be a case of malice in fact, or personal ill-will or spite on the part of the State. It could only be malice in law, i.e legal mala fide. The State, if it wishes to acquire land, could exercise its power bona fide for statutory purpose and for none other. It was observed that it was only because of the decree passed in favour of the owner that the proceedings for acquisition were necessary and hence, notification was issued. Such an action could not be held mala fide.

24. In brief, malice in law is when a power is exercised for an unauthorized purpose or on a fact which is claimed to exist but in fact, is non-est or for the purpose for which it is not meant though apparently it is shown that the same is being exercised for the purpose the power is supposed to be exercised. (See The Manager, Government Branch Press and Another Vs. D.B. Belliappa, Punjab State Electricity Board Ltd. Vs. Zora Singh and Others, K.K. Bhalla Vs. State of M.P. and Others, P. Mohanan Pillai Vs. State of Kerala and Others, M.P. State Co-op. Dairy Fedn. Ltd. and Another Vs. Rajnesh Kumar Jamindar and Others, Swaran Singh Chand Vs. Punjab State Electricity Board and Others, and Sri Yerneni Raja Ramchander @ Rajababu Vs. State of A.P. and Others,

25. The order dated 14.8.2008 which is the basis of the relief sought in the writ petition has been obtained by the Petitioner and passed by the authority concerned in the garb of giving effect to a judgment of this Court though no such judgment exist. In other words the judgment exist but it does not say so what the authorities have purported and construed therein and thereof. This constitute a case of fraud and misrepresentation also, and, that being so, it vitiates everything.

26. It is now well known that the fraud vitiate all solemn acts. In Smith v. East Ellos Rural District Council (1956) 1 All ER 855, it was held that the effect of fraud would normally be to vitiate all acts and orders. In Lazarus Estate Ltd. v. Beasley (1956) 1 QB 702, Lord Denning, I.J. said:

no judgment of Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. "Fraud unravels everything".

27. In the same judgment, Lord Parkar-CJ said:

Fraud vitiate all transactions known the law to whatever high degree of solemnity.

28. In *Deny v. Peek* (1986) All ER 1 what constitute fraud was described as under:

Fraud is proved when it is shown that the a representation has been made (1) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false.

29. It is stated when a document has been forged, it amounts to a fraud. In Webster's Comprehensive Dictionary, International Edn., "forgery" is defined as:

The act of falsely making or materially altering, with intent to defraud; any writing which, if genuine, might be of legal efficacy or the foundation of a legal liability.

30. Thus forgery is the false making of any written document for the purpose of fraud or deceit. Its definition has been quoted with approval by Apex Court In *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, The Apex Court in para 28 has said that fraud is an essential ingredient of forgery. It further held:

since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practiced upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a part, the Court has the inherent power to recall its order.

31. Extending the said principle to the tribunal, in *United India Insurance Co. Ltd. Vs. Rajendra Singh and Others*, , the Apex Court held:

We have no doubt that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation....

32. Similar is the view taken in *Roshan Deen Vs. Preeti Lal*, It was held that the Commissioner under the workmen Compensation Act can recall an order which was a result of a fraud played upon him. It cannot be said that he would be helpless in such a situation and the party who has suffered would also be helpless except to succumb to such fraud.

33. In *Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another*, it was held that an order obtained by fraud, collusion, misrepresentation, suppression of material facts or giving or furnishing false particulars would be vitiated in law and cannot be reopened. The Apex Court following the proposition laid down earlier in the case of *Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers*, held:

Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false.

34. It is undisputed that the Petitioner was transferred on 27.6.2006. It was not a transfer outside even the city but in the same city, only from one hospital to another. No apparent reason or illegality exists in such order of transfer. There also did not exist any justification or legal authority empowering or entitling the Petitioner to disobey or disregard the transfer and not to comply the same. However, the fact remains, that, she could administer audacity and failed to comply the said order of transfer. When she was directed to join and comply by the Chief Medical Officer by letter dated 1.12.2006, she came to this Court, after almost three months thereafter, in Writ Petition No. 14771 of 2007. The affidavit in the aforesaid writ petition is sworn on 28.2.2007. However, the writ petition was presented in the Court on 16.3.2007 and thereafter was dismissed on 20.3.2007. During this period also the Petitioner did not possess any authority or justification for not complying the above order of transfer and to stay away from discharging duties, despite that in the meantime, she was already relieved and her salary was also stopped.

35. Then the second Writ Petition No. 17680 of 2007 was filed on 2.4.2007 which was dismissed on 7.5.2008. Upto this date also, the Petitioner's absence from duty was wholly unauthorized. The writ petition having been dismissed, this put a seal not only on the validity of the order of transfer but also confirmed Petitioner's action of not complying with the order of transfer is unjustified. Thereafter the events took place in a real strange but evidently collusive manner. On 26.5.2008 the Petitioner filed a representation before the Director General (Medical Health) which was attended by the Director (Medical Care). Copy of this application has been placed on record as Annexure-CA-1 to the affidavit filed by Sri P.M. Srivastava, the then Director (Medical Care). It is this application of the Petitioner which was processed and the authorities gave it a color, as if they are proceeding to comply with the Court's order. In the meantime another letter was submitted by the Petitioner on 8.7.2008 which was addressed to Director (Medical Care), a copy whereof has been placed on record as Annexure-CA-2 to the affidavit filed by Sri P.M. Srivastava. It is this letter of the Petitioner which was taken up by the Director (Medical Care) for the purpose of obtaining certain nothings in the file as shown in Annexure-CA-3 & 4 to the affidavit filed by Sri P.M. Srivastava. Thereafter the impugned order was passed in the manner as already discussed above.

36. There does not appear to be any other justification shown in the aforesaid noting except that the authorities concerned attempted to give color to their action as if they are complying some kind of order or direction of this Court though there exist none. This, in my view, is clearly a case of not only deliberate and intentional twisting of the facts to obtain a desired result but it satisfy the requirement of not only the principle of malice and law but also that of fraud and misrepresentation both.

37. Now i come to the defense taken by Sri P.M. Srivastava, the then Director (Medical Care) who is present in the Court, admits that he did not understand

the High Court's order. This defense could have been correct had it been a long drawn order discussing legal principles threadbare, making it too difficult for a person having no legal background to understand such detailed judgment. But here is a judgment which is simply in two paragraphs and clearly show that the writ petition has been dismissed by this Court on costs of Rs. 5000/- observing that prima facie it was of the view that this was a case of the abuse of the process of the Court. Despite this a judgment, so specific, so clear, so unambiguous, if an authority who has passed the impugned order, could say that the said judgement could not be understood, atleast i am not inclined to believe.

38. The defence lacks bona fide. This is evident and apparent. In departmental transactions, particularly in the matter of transfer and posting, now the Courts have taken judicial cognizance that a lot of corrupt activities have intruded. This has become a very large chunk of non public related activities at the level of bureaucrats. It is very difficult and in fact almost impossible to obtain a lawful and valid order from the authorities concerned unless they are made to move by approaching and pleasing them in different ways and means. The cases of corruption, to get it proved, by having a direct evidence of give and take is almost impossible except where some of the officials are trapped. But this is also possible only when the party who is asked to adopt such means is agreeable and willing to take the help of the machinery meant for prevention of such activities. Otherwise, these are private affairs, involving one and one, where both agree. Hence is almost impossible to find out direct evidence. It is for this reason that judicial cognizance, this Court can take of the fact that despite of wide spread corruption throughout the country, we find handful of cases where public servants have actually been punished for such kind of charges. It is true that every day, in news and otherwise, we read several such cases where law enforcing machinery, responsible for prevention of corruption, have detected, and raided the premises etc. of public servants, recovered lot of wealth, but in actual execution of prosecution etc., we find almost negligible cases where the public servants have actually been prosecuted and punished. Sometimes on account of extraordinary delay, sometimes due to deliberate slow pace of the proceedings of investigation or prosecution or otherwise and sometimes for other reasons, we ultimately find, that, things have resulted in discharge of public servants without any meaningful and effective preventive measures/punishment.

39. In the last 60 years of independence, if there is one field we can boast of a national all-round development and that too multifold, it is the field of corruption. It has various shades. It is not confined to only one field of bribery, cash and kind, but has different colors and nuances.

40. There are some statutes in the name of checking/preventing this menace, but that is virtually toothless, a paper tiger. These statutes have not proved at all, in actual sense, a deterring measure, for the civil servants engaged in such activities. In fact these activities are beyond any limits and bounds and have crept in all the wings of State, whether executive, legislature or even judiciary.

41. Corruption has been defined in different dictionaries and some of which, useful for our understanding, may be reproduced as under.

42. "The Concise Oxford Dictionary of Current English" published by Oxford University Press, first published in 1995, at page 301 defines corruption as under:

Corruption: 1 moral deterioration, esp. widespread. 2 use of corrupt practice, esp. bribery or fraud. 3 a irregular alteration (of a text, language, etc.) from its original state b an irregularly altered form of a word. 4 decomposition, esp of a corpse or other organic matter. [Middle English from Old French corruption or Latin corruption (as Corrupt)].

43. In P. Ramanath Aiyer "Concise Law Dictionary With Legal Maxims, Latin Terms & Words and Phrases" published by Lexis Nexis Butterworths Wadhwa Nagpur, Third Edition Reprint 2010, at page 268:

Corruption. Something against law; something forbidden by law, as certain acts by arbitrators, election or other officers, trustees; an act done with intent to gain an advantage not consistent with official duty and the rights of others.

44. In "Judicial Dictionary" by KJ Aiyer, 14th Edition, Lexis Nexis Butterworths India, New Delhi, 2007, at page 288:

Corruption. The term covers "criminal misconduct". A public servant is said to commit an offence of criminal misconduct in the discharge of his duty, if he, by corrupt or illegal means, or by otherwise abusing his position as a public servant, obtains for himself or for any other person, any valuable thing or pecuniary advantage.

An attempt to obtain a bribe in a single case, which was never paid, does not fall under Clauses (a), (b) or (d) of s 5, and therefore, is not "corruption", within the meaning of the Prevention of Corruption Act 1947.

45. In "Encyclopaedic Law Dictionary (Legal & Commercial)" by Dr. A.R. Biswas 3rd Edition 2008, published by Wadhwa and Company, at page 369:

Corruption. Corruption is impairment of integrity, virtue or moral principle, depravity; inducement to wrong by bribery or other unlawful or improper means; a departure from honesty, integrity or fair dealing.

46. In the context of some statutory provision or even otherwise the word "corruption" has been explained in various decisions by the Courts also and some of such may be referred as under.

47. In Secretary, Jaipur Development Authority v. Daulat Mal Jain, 1997 (1) SCC 34:

.... When satisfaction sought in the performance of duties is for mutual personal gain, the misuse is usually termed as "corruption".

48. In High Court of Judicature at High Court of Judicature at Bombay through its

Registrar Vs. Shirish Kumar Rangrao Patil and another,

Corruption, appears to have spread everywhere. No facet of public function has been left unaffected by the putrefied stink of "corruption". "Corruption" thy name is depraved and degraded conduct..... In the widest connotation, "corruption" includes improper or selfish exercise of power and influence attached to a public office.

49. In B.R. Kapur v. State of T.N. 2001(7) SCC 231:

...scope of "corruption" in the governing structure has heightened opportunism and unscrupulousness among political parties, causing them to marry and divorce one another at will, seek opportunistic alliances and coalitions often without the popular mandate.

50. In State of Andhra Pradesh Vs. V. Vasudeva Rao,

... The word "corruption" has wide connotation and embraces almost all the spheres of our day-to-day life the world over. In a limited sense it connotes allowing decisions and actions of a person to be influenced not by rights or wrongs of a cause, but by the prospects of monetary gains or other selfish considerations.

51. In the context of the Prevention of Corruption Act and Section 161 Indian Penal Code the Courts were mainly concerned as to when it can be said to be an offence and that is how it has been interpreted and some of such decisions may also be looked into. (1942 Rang 30 ; State of Madras (Collector of Coimbatore) Vs. Rajagopala Ayyar (C.S.), and, Bishambar Lal Daya Chand Vs. State of Punjab,

52. In general the well accepted meaning of corruption is the act of corrupting or of impairing integrity, virtue, or moral principle; the state of being corrupted or debased; lost of purity or integrity; depravity; wickedness; impurity; bribery. It further says, "the act of changing or of being changed, for the worse; departure from what is pure, simple, or correct; use of a position of trust for dishonest gain."

53. Though in a civilized society, corruption has always been viewed with particular distaste to be condemned and criticized by everybody but still one loves to engage himself in it if finds opportunity, ordinarily, since it is difficult to resist temptation. It is often, a kind, parallel to the word "bribery", meaning whereof in the context of the politicians or bureaucrats, induced to become corrupt. The Greek Philosopher Plato, in. 4th Century BC said, "in the Republic that only politicians who gain no personal advantage from the policies they pursued would be fit to govern. This is recognized also in the aphorism that those who want to hold power are most likely those least fit to do so." While giving speech before the House of Lords William Pitt in the later half of 18th Century said, "Unlimited power is apt to corrupt the minds of those who possess it." Lord Acton in his letter addressed to Bishop Creighton is now one of the famous quotations, "Power tends to corrupt and absolute power corrupts absolutely."

54. Corruption is a term known to all of us. Precise meaning is illegal, immoral or unauthorized act done in due course of employment but literally it means "inducement (as of a public official) by improper means (as bribery) to violate duty (as by committing a felony)." It is an specially pernicious form of discrimination. Apparently its purpose is to seek favorable, privileged treatment from those who are in authority. No one would indulge in corruption at all if those who are in authority, discharge their service by treating all equally.

55. We can look into it from another angle. Corruption also violates human rights. It discriminates against the poor by denying them access to public services and preventing from exercising their political rights on account of their incapability of indulging in corruption, of course on account of poverty and other similar related factors. Corruption is, therefore, divisive and makes a significant contribution to social inequality and conflict. It undermines respect for authority and increases cynicism. It discourages participation of individuals in civilised society and elevates self interest as a guide to conduct. In social terms we can say that corruption develops a range bound field of behavior, attitude and beliefs. Corruption is antithesis of good governance and democratic politics. It is said, that when corruption is pervasive, it permeates every aspect of people's lives. It can affect the air they breathe, the water they drink and the food they eat. If we go further, we can give some terminology also to different shades of corruption like, financial corruption, cultural corruption, moral corruption, idealogical corruption etc. The fact remains that from whatever angle we look into it, the ultimate result borne out is that, and the real impact of corruption is, the poor suffers most, the poverty groves darker, and rich become richer.

56. In the case in hand, it may not be necessary for this Court to go in the concept of corruption a bit more deep but i find that here is a case where a senior officer of the Government, in the rank of Director, indulged himself in a sheer illegal act but giving it a colour of compliance of this Court's order and that is how has also tried to overlook a complete defiance on the part of a petty employee, i.e., a staff nurse, who could dare to disobey and defy order of a much superior officer, i.e., Chief Medical Officer and remain absent for almost two years. He has also tried to give ah occasion to such a defying employee to claim condonation of such defiance and reward with all benefits without any loss. This would result ultimately a loss to public exchequer also inasmuch as a non-worker, if paid salary for such a long time for her/his sheer audacity of remaining absent, it would also amount to a breach of trust with public revenue to which every public servant owe a duty and responsibility. In P.K. Chinnasamy Vs. Government of Tamil Nadu and Others, , the Apex Court said that every public servant holds the office in trust to the public and, therefore, to justify expenditure of public revenue, duties commensuration to the office must be allowed to be discharged by every public servant. Admittedly, that has not happened in this case. The Petitioner has failed to perform her duty without any authority on her part. From the point of view of Petitioner or some public servant, it could have been a small matter, but this Court has no hesitation in

putting on record that omission of small level of corruption ultimately grow cancerously. This country has now reached a stage where we find level of corruption running in several thousand of crores and going to even lacs of crores. Everyone wherever is possible, indulging in such activities depending on one's capacity, capability and opportunity. This Court do not mean to say that all are corrupt. Fortunately that is not so. Still we have sufficiently large number of people who do not indulge in such activities and bold enough to discard any attempt, if made by someone, but those who want to take advantage of such widespread corruption, have now become so fearless that they can dare to approach and go to any extent to lure those who are in authority, to seek favour in one or the other manner. In their belief, everyone has some price, degree may defer. Fortunately, this country still has sufficiently large number of people who are beyond such vice. Probably it is for this reason we are still marching ahead and developing with galloping pace but now time has come when stem steps have to be taken with determination and cementised will to nip out corruption at every level, lest it may be too late.

57. I do not intend to indulge in further discussion on this aspect since it needs be debated, at different forum, so as to enlighten the people, and to pursue them to stand against and to arm them so as to route it out. This Court is well aware that in this process, the prime responsibility lies on the executive. But in particular it is now of paramount importance that the judiciary must also take this task upon itself. The cases involving corruption must be dealt with extraordinary" pace. It must ensure that those indulged in corruption are prosecuted and punished at the earliest and within a reasonable time. The judiciary should not show any leniency on corruption and corrupt people whether small or larger, one. A message must go that corruption at all cost shall result in severe and deterrent punishment. The booty, loot or benefit one has earned by indulging in corruption, must be forfeited so that it may become a part of public revenue, and may be utilized for public benefit, instead of allowing it to remain with the corrupt beneficiary, otherwise, the effectiveness of deterrence shall stand lessened. The law enforcement machinery, i.e., investigators must probe such matters independently, without any interference and should ensure completion of investigation within record time. Everyone who abate, who allow to perpetuate by inaction, encourage it and similarly all other persons connected in one or other way be dealt with in the same manner as if the corrupt person and should be punished severely but with a pace so that the others may learn lesson and continue in their memory. It be not allowed to be eroded with passage of time. All this require determination and will, at different level and needs to be looked into with real sincerity since time has ripened now.

58. Coming to the case in hand one may say that apparent act of corruption is not evident but the manner in which the authority has proceeded and the things have come on record and the parties have taken shelter to a judicial order, tell much. In this background i am clearly of the view that here is a case where the Petitioner is disentitled for payment of salary for the period she remain absent

unauthorized and without any authority. Cancellation of order of transfer, at the best, even if it is taken to be a *fait accompli* may operate prospectively. For past more than two years, the Petitioner did not perform any duty and remained absent. I do not find any justification to direct the authorities to pay salary merely because almost after two and half years, the transfer order was cancelled and that too in a clandestine manner. It is not a case where the Petitioner's deliberate and intentional absence can be condoned. The then Director (Medical Care) has clearly acted in an illegal manner.

59. However, in the facts as discussed above and the circumstances of the case in hand, I am also of the view that here is a case where a disciplinary inquiry needs be conducted against the officials who caused in passing order dated 14.8.2008 irrespective of the fact that the authority concerned who ultimately passed the order has retired since the departmental inquiry with approval of the Governor can be held within four years from the date of retirement and incumbent concerned has retired only in the last year. The Principle Secretary (Medical & Health), therefore, is directed to forthwith initiate departmental inquiry in the matter and after completion thereof in accordance with Rules pass appropriate order under intimation to this Court within six months.

60. In the result, i find no merit in the writ petition. It is accordingly dismissed with costs which is quantified to Rs. 10,000/-. It shall be deposited with the Registrar General of this Court within two months, failing which it may be recovered as arrears of land revenue. The Registrar General is directed to send a copy of this order forthwith to the Principal Secretary (Medical & Health), U.P, Lucknow for information and compliance and after receiving the intimation from him, as directed above, shall place the same before the Court having jurisdiction in the matter at that time.