
(2013) 04 P&H CK 0196
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12695 of 1992

Smt. Pushpa Bhardwaj

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2014) LabIC 664

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Advocate : R.K. Malik, Ms. Manruchi Randhawa, for the Appellant; Palika Monga, DAG, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for issuance of writ in the nature of certiorari for quashing orders/letters, Annexures P-6, P-13 and P-15. Briefly stated, the facts necessary for adjudication of the present petition as narrated therein are that the petitioner was appointed as A.N.M. by respondent No. 2 and she joined as such on 6.10.1981. She rendered service upto 23.9.1984 and had taken leave from 24.9.1984 to 24.2.1985 and went abroad after prior sanction of the leave as her husband had gone abroad. The petitioner vide application dated 11.2.1985 (Annexure P-3) requested for extension of leave upto 31.12.1985. The petitioner joined her duties vide joining report dated 9.2.1987 (Annexure P-5). However, her services were terminated vide order dated 18.2.1987 (Annexure P-6). The petitioner filled up the bond to serve the department and after termination of her services, a letter dated 2.7.1982 (Annexure P-7) was issued to the surety to deposit the surety amount i.e. Rs. 1247/-. Thereafter, the petitioner sent a representation dated 22.12.1987 (Annexure P-8) to respondent No. 2 to take her back in service. On 10.2.1988, respondent No. 2 again sent a letter (Annexure P-9) to the surety to deposit the amount of Rs. 1247/-. The petitioner vide representation (Annexure P-10) approached the Health Minister upon which

the Joint Secretary, Health Department was called. The Health Minister vide order dated 22.2.1991 (Annexure P-12) directed the department to take the petitioner back in service. Instead of taking the petitioner back in service, respondent No. 2 rejected her representation vide order dated 29.11.1991 (Annexure P-13). Thereafter, the petitioner filed representation dated 7.3.1992 (Annexure P-14). However, she was informed in the month of May, 1992 that her representation has been rejected vide letter (Annexure P-15). Hence, the present writ petition.

2. Upon notice of motion having been issued, the respondents filed written statement controverting the averments made in the writ petition. It was pleaded that initially, the petitioner was appointed on ad hoc basis w.e.f. 25.9.1981 and she went on leave without pay. Thereafter her leave was not sanctioned by the Government and she was directed to join duty vide letter dated 27.1.1986 (Annexure R-1). She did not join her duties and her services were terminated vide order dated 10.2.1987 (Annexure P-5). The prayer for dismissal of the writ petition was made.

3. Learned counsel for the petitioner submitted that vide Annexure P-12, the Health Minister had recommended that the petitioner be taken back in service and in between period be treated as leave of the kind due. It was urged that Annexures R-1 and R-2 issued by the Chief Medical Officer, Sonapat to the petitioner regarding her absence from duty were sent at the wrong address and were never received by the petitioner. It was contended that since no enquiry was held before terminating the services of the petitioner, the same was unsustainable in view of judgments of the Hon'ble Supreme Court in *Om Prakash Goel Vs. The Himachal Pradesh Tourism Development Corporation Ltd., Shimla and another*,) *Jarnail Singh and Others Vs. State of Punjab and Others*, ; and this Court in *Dr. Baljit Singh v. The State of Haryana and another*, 1989 (2) SLR 135.

4. Learned State counsel, on the other hand supported the order dated 18.2.1987 (Annexure P-6) and submitted that the petitioner was sanctioned leave upto 24.2.1985 and did not join the duty and in fact, she submitted the joining report after almost two years on 19.2.1987. It was contended that in such circumstances, the petitioner shall be deemed to have abandoned her job. It was also argued that the services of the petitioner were terminable in terms of appointment letter, Annexure P-1. The petitioner went on leave without pay and thereafter her leave was not sanctioned and she did not join her duties in spite of Annexures R-1 and R-2 having been sent to her.

5. After hearing learned counsel for the parties, I do not find any merit in the writ petition. Undisputedly, in this case, the petitioner was appointed as Auxiliary Nurse Midwife on ad hoc basis vide Annexure P-1 dated 25.9.1981. The appointment was on ad hoc basis extendable for a period of six months or till such time a recommendee from the Subordinate Services Selection Board reported for duty. Further, the services were terminable on 24 hours notice on either side without assigning any reason. The petitioner had taken leave from

24.9.1984 to 24.2.1985 which was sanctioned and the petitioner did not report for duty on the expiry of the sanctioned leave. Though a request for extension of leave beyond 24.2.1985 had been sent by the petitioner on 11.2.1985, but there was no order passed extending the leave beyond 24.2.1985. Learned counsel for the petitioner was unable to show that application sent on 11.2.1985 was ever accepted by the department. As per averments in the written statement, the petitioner had been intimated vide communication dated 27.1.1986 (Annexure R-1) but the petitioner failed to comply with the same. The plea of the petitioner that Annexure R-1 was never received by her cannot be accepted in the light of plea in the written statement to which there is no denial by way of replication. This Court in *Kulbir Singh v. State of Punjab* 1992 (1) SCT 209 where on expiry of sanctioned leave, the petitioner had failed to join the duty and had sent another application for further leave which was never accepted held that only presumption in such circumstances would be that of abandonment of the post. The relevant observations read thus:--

After hearing learned counsel for the parties, I find that there is no merit in the appeal. The facts of this case clearly show that the plaintiff, on the expiry of his leave, failed to join his duty on 10.7.1976. Instead of joining, he sent another application for grant of leave for 65 days and the said application was rejected on 12.7.1976. The plaintiff never cared to join his duty, when his application for leave was rejected. When the order rejecting his leave was sent through registered post, the same was received back by the defendant with the remarks of the postal authorities that the plaintiff was not found in the village. The plaintiff did not join his duty even after notice was published in the newspapers on 30.11.1976 requiring him to join duty within 15 days. This clearly shows that the plaintiff, of his own sweet will, has been on leave from 10.7.1976 without obtaining previous permission. From the facts of this case, no other conclusion can be arrived at except that the plaintiff had actually abandoned his post of duty for exceedingly long period without sufficient grounds for his absence. No useful purpose could have been served to give him any further opportunity. Even otherwise the suit of the plaintiff is clearly barred by time inasmuch as his services were terminated on 10.2.1977 and the present suit has been filed on 6.11.1982. Cause of action to the plaintiff had arisen on the day his services were terminated and the suit could be filed within three years from the day when the cause of action had arisen. It is not the case of the plaintiff that the authority terminating his services was not competent to pass order of termination. Thus, the order terminating his services cannot be said to be null and void or passed by a person who had no jurisdiction to pass such an order.

6. Unless the leave had been sanctioned by the appropriate authority, no benefit can be derived by the petitioner by mere sending of the leave application. The employee who is working with the department is required to follow certain discipline and adopt the procedure for leave. There is no provision for automatic extension of leave. In such a situation, when the petitioner failed to resume her duties after the expiry of the same on 24.2.1985, she could not legally justify her

absence. In such circumstances, the petitioner had abandoned her services and the orders/letters Annexures P-6, P-13 and P-15 are in accordance with law.

7. The judgments relied upon by the learned counsel for the petitioner were not relating to the cases where the petitioner had abandoned the services and the cases being on individual fact situation involved therein do not support the case of the petitioner. In view of the above, finding no merit in the writ petition, the same is hereby dismissed.