

(2002) 11 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 1390-C of 2002 and Regular Second Appeal
No. 193 of 2002

State of Punjab

APPELLANT

Vs

Dr. Meena Hardip Singh

RESPONDENT

Date of Decision : 25-11-2002

Acts Referred:

Punjab Civil Medical Service (Class II) Rules, 1982 — Rule 11

Citation : (2003) 133 PLR 342

Hon'ble Judges : S.S. Nijjar, J;M.M. Kumar, J

Bench : Division Bench

Advocate : A.S. Jattana, D.A.G, for the Appellant; S.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—At the time of the admission of the appeal counsel for the respondent was not heard. Mr. Sharma made an application stating therein that in spite of the fact that the caveat had been filed, the office had failed to attach the same with the paper book. Learned counsel submits that not only interim order could not have been given in this case, if the facts had been brought to the notice of this Court, the appeal itself would not have been admitted. In view of the above, the learned counsel prays that the order of admission be recalled. I am of the considered opinion that instead of recalling the order of admission dated 15.1.2002, it would be more appropriate to hear the appeal finally. With the consent of the counsel for the parties the appeal is taken on board for regular hearing.

2. I have heard the counsel for the parties at length.

3. The trial Court dismissed the suit filed by the respondent holding that she was not on duty when initial period of probation of two years had expired on 7.2.1987. It is further held that since the application for leave had not been

rejected by that time, it can be presumed that her period of probation stood extended by one year by implication, and therefore it was not necessary to pass any express order. In the very next line, it is held that the order passed on 9.3.1988 extending me period of probation can be ignored having no implication at all. The learned trial Court has further held that since the order has been passed during the period of probation it was not necessary to comply with the rules of natural justice. The judgments cited by the counsel for the respondent before the trial Court have also been distinguished on the ground that they are not applicable as the services of the respondent have been terminated during the period of probation.

4. The appeal filed by the respondent has been accepted. The appellant had joined service on 8.2.1985. Thus her period of probation, even if it is taken to be extended by one year, had expired on 7.2.1988. The impugned order terminating the services of the respondent was passed by the respondents on 9.3.1988. By this same order the period of probation of the appellant is extended from 14.3.1987 till 13.3.1998 retrospectively. Therefore, it is obvious that the services of the respondent had not been terminated during the period of probation on the ground that her work was not satisfactory. Admittedly, the respondent is governed by the Rules and Conditions contained in Punjab Civil Medical Service (Class-II) Rules 1982. She was put on probation by virtue of rule 11. This rule inter alia provides that the total period of probation including the extension period shall not exceed three years. Apparently the three years expired on 7.2.1988. Therefore, the respondent was deemed to be confirmed on the post. Consequently, the respondent could not have been dismissed or removed from service by way of punishment without observing the rules of natural justice. In fact the Rules of natural justice have been embodied in the Punjab Civil Services (Punishment and Appeal) Rules, 1970 under which action ought to have been taken.

5. Having considered the findings given by the appellate court, I find no cogent reason has been put forward for interfering with the same. I am of the considered opinion that no substantial question of law has been raised. In view of the above, the appeal is dismissed.

6. However, it is made clear that the department shall be at liberty to proceed against the respondent, in accordance with law, if so advised.

Sd/- S.S. Nijjar, J.