
(1964) 03 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1609 of 1963

T.S. Kaushal

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 25-03-1964

Acts Referred:

Constitution of India, 1950 — Article 226
East Punjab Essential Services Maintenance Act, 1947 — Section 5

Citation : AIR 1965 P&H 455

Hon'ble Judges : I.D. Dua, J

Bench : Single Bench

Judgement

(1) (D/- 2-3-1964) During the course of arguments, Shri. Kaushal, learned counsel for the petitioner, has drawn my attention to two documents produced by him (see pages 79 and 147 of the paper-book) in which he has given a list of 18 doctors whose resignations were accepted by the authorities between 25-1-1963 and 16-8-1963. He has submitted that this acceptance of resignations is inconsistent with the contention put forth by the respondents, that there is a shortage of doctors in Government service and that this is why the petitioners case is being treated as an example for those who are inclined to shirk duty in public services. Shri Pannu has in reply stated at the bar that these are cases of doctors most of whom were going to offer their services in joint defence but in the return or in the supplementary affidavit, there is no mention of this plea. In the circumstances, it is desirable that the respondents furnish full information about these doctors, supported by an affidavit. Adjourned to 6-3-1964.

(2) (D/- 25-3-1964) This order may be read in continuation of my order dated 2nd of March, 1964. Dr. T. S. Kaushal has filed this petition under Art. 226 of the Constitution. He joined the service of the Punjab Government on 16th July, 1958 as an Assistant Surgeon (Non-gazetted) in Rural Dispensary, Sohargarh, Dist. Ferozepore. On 6th February, 1960, he was transferred to Rural Health Centre, Bhadson, District Patiala in Punjab Civil Medical Services (P. C. M. S.) Class II. His appointment was purely temporary and his services could be terminated on

one months notice by either side. On 23rd May, 1963, he was posted at Primary Health Unit, Mullana, District Ambala, where he performed his duties satisfactorily, there being no complaint against him whatsoever. His last pay for April, 1963 was raised to Rs. 595 P. M. On 24th January, 1963, his mother died on account of cancer, having been ill for about a year and a half. His wife had also suffered in health on account of having been busy in nursing her mother-in-law. The petitioner on view of his wife ill-health on 27th April, 1963, applied for his transfer to other Employees State Insurance Dispensary, Sonapat, because he wanted to avail of better treatment facilities by taking his wife to Delhi as and when necessary. On 30th April, 1963 he came to Chandigarh and learnt that he was being transferred to Lahaul-Spiti, a far flung non-family station. He thereupon submitted another application to the Director of Health Service, Punjab, and also forwarded copies thereof to the Chief Minister and the Health Minister, Punjab, stating the circumstances requiring his presence at a station where he could attend to his wife. His father aged 70 years also required the petitioner attention. He was however, informed by the Director of Health Services that his transfer to Lahaul Spiti could not be cancelled.

Finding it difficult to persuade the authorities concerned to agree with the petitioners point of view, he submitted his resignation on 22nd May, 1963, with a cheque for Rs. 595 to cover one months salary in lieu of notice. The authorities instead of taking a humane and favourable view adopted stiff attitude and started forcing the petitioner to join his duties in district Lahaul and Spiti. They also threatened to prosecute him under S. 5(b) of East Punjab Essential Service (Maintenance) Act, 1947 and S. 142(A) of Defence of India Rules, 1962. The petitioner again requested the respondents to accept his resignation, but without any fruitful results. On 3rd August, 1963 the petitioner met the Director of Health Services explaining to him personally the circumstances in which the petitioner was placed on account of the illness of his wife and his ailing father. This was followed by further representation, but having failed in his efforts to persuade the authorities concerned to consider his case more sympathetically he has come to this Court under Art. 226 of the Constitution.

(3) In the return it has been stressed that the petitioner absented himself from duty at Mullana on 1st May, 1963 without permission after leaving the application for one weeks earned leave. This was stated to be necessary on account of alleged illness of his wife. This leave was not granted. He, however, applied for one more weeks leave from 8th June, 1963; he had not applied for any leave between 15th May, 1963 and 14th June, 1963. There was another application dated 7th August, 1963, for leave from 10th August followed obey still another application for 15 days leave from 25th August, 1963. No leave was sanctioned to the petitioner, but he remained absent from duty from 1st May, 1963 onwards without complying with the orders of his transfer. The submission of a resignation by the petitioner, been admitted; but it has been stressed that the petitioner never gave one months notice to quit service. The petitioners application for leave, it is emphasised clearly shows that he continued to treat himself as if in

service. It has finally been pleaded that the petitioner on learning about his transfer to Lahaul and Spiti in public interest declined deliberately to comply with the orders on one pretext or the other and absented himself without leave. The petitioner, it is averred, could not claim any leave as of right and his leave applications were also not on the prescribed forms.

(4) During the course of arguments my attention was invited to the rejoinder, described as replication, filed by the petitioner and the annexures attached to it. In para. II of the replication the impugned action is described as mala fide because a large number of other doctors had submitted their resignations and they were accepted; the lists of those doctors were attached with the writ petition and the replication, the latter supplementing the former.

(5) The reply by the respondents being not full and very satisfactory. I desired their learned counsel to let me have fuller information on this point. A supplementary written statement has accordingly been presented in this Court in which reasons for the acceptance of resignation of 18 doctors mentioned by the petitioner have been disclosed. The resignations of 11 doctors mentioned in the supplementary written statement are stated to have been accepted in accordance with the terms of their appointment prior to the decision of the Government for not accepting the resignations in view of the promulgation of national emergency due to Chinese aggression and due to acute shortage of doctors. It however, appears that all the resignations have not been accepted as suggested. Before the declaration of emergency, certain doctors, according to the supplementary written statement, had been appointed purely on temporary basis for a period of six months and their resignations appear to have been accepted in May, June and July, 1963. It seems to be somewhat incongruous that in spite of the decision of the Government not to accept resignations in view of the promulgation of national emergency due to Chinese aggression, resignations of these doctors should have been accepted even though they were taken on temporary basis. On principle, this action would seem to be paradoxical, in a democracy governed by Rule of law. One of them Dr. Rajinder Singh Sidhu is stated to have gone for higher studies to U. S. A. and two other doctors are stated to have taken House Jobs, they would still be rendering service to the Government and preparing the way for higher jobs. Some lady doctors have been released from service on compassionate grounds which were found to be genuine.

(6) Realising that, legally it may not be easy for the petitioner to insist on having his resignation accepted through writ proceedings, because of the provisions of the East Punjab Essential Services (Maintenance) Act, 1947 and the Defence of India Rules, he has been constrained not to press the challenge to the impugned order of transfer on other ground of its manifest illegality. He has, however, quite forcefully urged that the attitude of discrimination adopted by the department, as is obvious from the position disclosed in the return, does not fit in with the Rule of law and equality of citizens in the eye of law, on which the whole structure of

our system of Government is founded. According to the petitioners learned counsel, his client was in genuine difficulties and he felt that if other doctors in Government service equally placed with him could be accommodated for less cogent reasons and kept away from Lahaul and Spiti, there was no just ground for insisting on his being sent there. Cold authoritarian rigidity divorced from humanitarian judicious considerations, it is suggested, is inconsistent with the democratic approach on which our constitutional set up is founded.

(7) This contention has been sought to be met on behalf of the respondents by denying any illegal discrimination and by insisting that the petitioner appeared to the department to be putting forth inadequate excuses and wrong pretexts for releasing to go to Lahaul and Spiti.

(8) On the facts and circumstances disclosed I am constrained to dismiss the writ petition on the ground that no sufficient material has been placed for giving to the petitioner the relief claimed on the challenge based on mala fides. I, however, cannot help remarking that in order to sustain and strengthen the faith of the people in the sense of justice and fair play on the part of the administration, consistent with the principles enshrined in our Constitution from which alone the entire administrative process draws its power and vitality, it is incumbent and indeed absolutely imperative, that the administrators most attempt to keep the scales even between man and man and also between Oman and State and further to see that the scales do not even appear to be inclined. It is only thus that our welfare democratic Republic founded on the Rule of law, justice and fair play, and our hard-won freedom can grow to strength, the most essential and imperative need during this period of transition. The democracy of our system requires an administrator or a civil servant who is loyal to the Constitution and who conscientiously strives to uphold it by administering the law fairly, justly and within the Rule of law completely detached from the baneful effects of power politics.

(9) At the same time, I must point out that every doctor and every public servant as indeed every citizen in this Republic, has to place the country and the interests to the nation, both present and further, uppermost in his mind and must not shirk to do his duty as a patriot, for he must remember that citizens liberty once lost is very difficult to regain; more so liberty under the Rule of law. Considerations of personal comfort and gain must yield to the need of the nation, particularly when the security of the State is endangered. Sense of discipline is also an indispensable attribute of public servant. And then, service in democratic Government like ours, which is constantly subject to moral judgment, calls for capacity which authoritarian regimes may consider inimical and it envisages a firm moral character to control talents like competence, skill and personal magnetism etc.

(10) The respondents counsel has assured me that the department would not adopt a vindictive attitude towards the petitioner and that every honest and conscientious effort is being made to administer the department strictly in

accordance with the constitutional mandate both in law and spirit, for the Republican civil servant as a modern democratic administrator is fully conscious of the paramount necessity of the citizens and the Government servants faith in the sense of honesty, straight-forwardness, justice and fair play, and equality of treatment under the Rule of law on the part of those entrusted with the solemn task of administration. This assurance is heartening, in that, it strikes an optimistic note for the future of our welfare democratic republican, set-up and shows a silver lining in the horizon. Modern Republican civil servant has a special responsibility, for he holds a privileged position of effectively influencing the day-to-day administration, and to the extent he succeeds in eliminating red-tape, narrow and petty quibbling of power-politics and bureaucratic inertia or indifference towards the welfare of the citizens, he will win the gratitude of posterity for having passed down the noblest inheritance known to civilized society imbued by democratic ideals of the Rule of law.

(11) With these observations and for the reasons aforesaid, this petition fails and is hereby dismissed but without costs.

(12) petition dismissed.