

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.1337 of 2019

Decided on: 08.09.2026

Dr. Manjula Gupta

...Petitioner

Versus

State of Himachal Pradesh and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioner:

Mr. Dilip Sharma, Senior Advocate
with Mr. Manish Sharma and
Ms. Anjali Chauhan, Advocates.

For the respondents:

Mr. Amandeep Sharma, Additional
Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner by way of present petition has
prayed for the following substantive reliefs:-

- "A) *That it is not in dispute that the petitioner reported for duty at DDU Hospital, Shimla on 18.7.2005. This is admitted by the then Medical Superintendent, DDU Hospital, Shimla in her letter dated 19.7.2005, Annexure P-1, wherein she sought instructions from respondent No.1 regarding joining of petitioner on 18.7.2005. Even in the chargesheet at Annexure P-4 dated 22.8.2005, it has been categorically admitted that the petitioner "joined the duties on 18,7.2005".*
- B) *That after joining duty on 18.7.2005, the petitioner made repeated representations to respondent No.2 as also to respondent No.1 with a request to assign her duties, to allow her to*

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

mark her attendance and also to release her salary. She never received any communication in that behalf from respondent No.1. However, she was told by respondent No.2 that she had sought instructions from respondent No.1 regarding her joining and without receiving directions from respondent No.1, she could not take any action on the joining report of petitioner. However, the joining report of petitioner was never refused in writing or verbally nor any orders in writing were ever conveyed to her by the respondent No.2 or respondent No.1."

2. Shorn of unnecessary details, the key facts of the case are that the petitioner while working as Medical Officer in DDU Hospital, Shimla suffered from PIVD on 21.03.2005 and she was advised complete bed rest by Department of Orthopaedics, IGMC Shimla. The petitioner had sent a telegram to the Department on 21.03.2005, followed by two more telegrams dated 04.04.2005 and 03.05.2005 informing about her illness. She was declared fit to resume the duty on 17.07.2005 and 17.07.2005 being Sunday, she reported for duty on 18.07.2005 at DDU Hospital Shimla, however her joining was forwarded by respondent No.2 to respondent No.1. Thereafter, the petitioner submitted a representation dated 02.08.2005 (Annexure P-2) to respondent No.1 pointing out therein that she has joined her duties at DDU hospital Shimla on 18.07.2005 and requested for granting her leave on medical grounds from 21.03.2005

to 16.07.2005 and allow her joining w.e.f. 18.07.2005. However, the petitioner vide memo dated 22.08.2005 was served with charges for her willful absence from duty w.e.f. 21.03.2005. The petitioner submitted another representation dated 03.09.2005 (Annexure P-5) to respondent No.2 that she has already joined her duties on 18.07.2005 forenoon. The petitioner is coming to the hospital daily, but she has never been assigned any duty in the hospital nor allowed to mark her attendance in attendance register in spite of her verbal requests. Vide communication dated 07.09.2005 (Annexure P-6), the petitioner was informed that she reported for duty on 18.07.2005 but was willfully absent from duty and directions were sought from the Government regarding her joining. Since no directions have been received from the Government, her joining cannot be accepted, so no question of allowing her to mark attendance or giving work arises. Thereafter, the petitioner has made various representations from 15.09.2005 to 19.06.2006 (Annexure P-7 to P-12) to respondents No.1 and 2 to allow her to mark her presence, however no response was given to her.

3. The petitioner, pursuant to the charges framed against her was imposed penalty of reduction to a lower

stage in time scale of pay for a period of 5 years without cumulative effect, vide office order dated 14.06.2006 (Annexure P-13). However, subsequently the said order was modified, vide office order dated 29.01.2011 (Annexure P-21) and the period was reduced for two years and later on as per office order dated 12.10.2011 (Annexure P-23), the penalty was reduced to one year. Thereafter the petitioner had retired from service on 31.12.2012.

4. The grievance of the petitioner in the present petition is not pertaining to penalty imposed upon her, but she is aggrieved by the order dated 15.07.2009 (Annexure P-18) and thereafter the order dated 12.10.2012 (Annexure P-24) passed by respondent No.1, whereby the period w.e.f. 18.07.2005 to 26.06.2006, when the petitioner has been allegedly remained absent from duty has been regularized as dies-non without break in service.

5. The petitioner feeling aggrieved by the said orders, whereby the period of absence has been regularized as dies-non without break in service, has approached this Court *inter alia* on the grounds that she had reported for duties on 18.07.2005 but respondent No.2 vide her letter dated 19.07.2005 had sought instructions from respondent No.1 regarding acceptance of her joining. It was even

noticed in the charge sheet dated 22.08.2005 (Annexure P-4) that the petitioner had joined her duties on 18.07.2005 and once the petitioner was neither assigned any duties nor allowed to mark her presence, though she was willing to discharge her duties, the said period has to be treated as duty period and further the petitioner is entitled to the salary of the said period. It has also been averred that as per the communication dated 07.09.2005 (Annexure P-6), it was specifically mentioned by respondent No.2 that her joining cannot be accepted, since no directions have been received from the State Government and thus, the petitioner who had remained present, the period w.e.f. 18.07.2005 till 26.06.2006 cannot be regularized treated as dies-non without break in service, whereas the petitioner has to be treated on duty and further she is entitled to salary and other service benefits.

6. The respondents filed reply to the petition and in preliminary submissions submitted that the petitioner was in the habit of remaining absent from duty willfully. She remained absent from 21.03.2005 to 16.07.2005 and thereafter from 18.07.2005 to 26.06.2006. The period of absence from 21.03.2005 to 16.07.2005 has been regularized by respondent No.2 vide office order dated

18.11.2008 by granting leave of the kind due on medical grounds. However, the period of willful absence from duty w.e.f. 18.07.2005 to 26.06.2006 has been treated as dession without break in service as per order dated 15.07.2009 passed by respondent No.3. The petitioner was also directed by respondent No.2 vide letters dated 31.03.2005 and 05.05.2005 to appear before the Medical Board for assessment of her ailment, but she did not appear. Thus the petitioner was charge sheeted under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules (in short 'CCS (CCA) Rules'), 1965 vide memorandum dated 18.08.2005. It has further been averred that the penalty was initially imposed of reduction to a lower stage in time stage of pay for a period of five years with cumulative effect vide office order dated 14.06.2006. An appeal against the order dated 14.06.2006 was filed before His Excellency the Governor, Himachal Pradesh, which was rejected on 15.12.2006. The petitioner had preferred Original Application No.3639 of 2006, registered as CWP(T) No.359 of 2008, which was decided on 08.03.2010, setting aside the orders dated 14.06.2006 and 15.12.2006 and direction was given to the disciplinary authority to pass speaking orders on the representations against the enquiry report.

The entire record was re-examined and penalty of reduction to a lower stage in time scale of pay from 5 years to 2 years was imposed vide order dated 29.01.2011. Thereafter the order of penalty was modified vide order dated 12.10.2011 (Annexure P-23) reducing the period of reduction to a lower stage in time scale of pay to one year keeping in view her retirement. Another CWP(T) No.5923 of 2008 was filed by the petitioner praying for release of salary from 18.07.2005 to 26.06.2006, which was disposed of vide order dated 22.07.2011 with direction to decide the appeal filed against the order dated 15.07.2009. Complying with the directions passed by the Court, office order dated 12.10.2012 (Annexure P-24) was passed, upholding the period of absence from 18.07.2005 to 26.06.2006 as dies-non without break in service. It has further been averred that one period of willful absence was regularized and the second, longer period of absence was also regularized as dies-non without break in service, the impact of which is simply 'no pay for no work'. It may be recalled that the petitioner was charge sheeted, found guilty in the subsequent enquiry and probably deserved to be removed from service, as such has prayed for dismissal of the petition.

7. I have heard Mr. Dilip Sharma, learned senior

counsel duly assisted by Mr. Manish Sharma and Ms. Anjali Chauhan, learned counsel for the petitioner, and Mr. Amandeep Sharma, learned Additional Advocate General for the respondents and also perused the record carefully.

8. So far as the penalty, which has been imposed upon the petitioner for willful absence from duty is concerned i.e. for the period w.e.f. 21.03.2005 to 16.07.2005, the same is not the subject matter of the present lis. Though the penalty of reduction to lower stage in the time scale of pay for one year was imposed vide office order dated 12.10.2011, but the period of absence from 21.03.2005 to 16.07.2005 has been regularized by respondent No.2 vide office order dated 18.11.2008 (Annexure P-17).

9. The dispute in the present case is only pertaining to the period w.e.f. 18.07.2005 to 26.06.2006. During this period, the petitioner had reported for duty on 18.07.2005, which fact has not been disputed by the respondents either by filing reply to the petition or even the representations made by her stating that she is daily going to the hospital, but neither any duty has been assigned to her nor she is allowed to mark her attendance. As per the representation dated 03.09.2005 (Annexure P-5), which was duly received

by respondent No.2, it was conveyed to her that since her case with regard to willful absence from duty since 21.03.2005 has already been reported to the Government and till the time instructions are accorded, her joining cannot be accepted and she can't be allowed to mark attendance or give her work. Therefore, it cannot be said or construed in any manner that the petitioner had remained willfully absent from duty w.e.f. 18.07.2005 to 26.06.2006. The petitioner has placed on record various representations w.e.f. 15.09.2005 to 19.06.2006, whereby she was requesting respondents No.1 and 2 to allow her to mark her attendance as she was daily going to the hospital and also to assign her duties, but the said respondents did not pay any heed to her requests. Once the respondents did not allow the petitioner to discharge her duties, when she was not given the work, it cannot be said that the petitioner had willfully remained absent from duty. As already observed above, qua the period when she remained absent, the said period has been regularized, but despite that the petitioner has been imposed with the penalty and when the petitioner had submitted her joining, she was not allowed to mark her presence and also no work was allotted to her. Thus, it cannot be said that the said period has to be treated as

dies-non after regularizing the said period. Once the petitioner had been representing the respondents to allow her to discharge her duties and also to mark her presence, who was daily giving to the hospital, she is entitled to the salary of the period w.e.f. 18.07.2005 to 26.06.2006, especially when there was no other factor which could have weighed with the respondents while treating the said period as dies-non.

10. Learned Additional Advocate General has vehemently argued that once the petitioner was charge sheeted and she had remained willfully absent, she was not permitted to join her duties. However, the said contention cannot be accepted for the reason that, since the petitioner was neither put under suspension nor any other steps were taken to legally debar her to join her duties, she cannot be denied the salary of the period which has been treated as dies-non. The said action on the part of the respondents is totally illegal, arbitrary and discriminatory. The plea taken by the respondents in the reply that the period of absence w.e.f. 18.07.2005 to 26.06.2006 has been regularized as dies-non without break in service, the impact of which is simply 'no pay for no work' can't be accepted. Once the petitioner had been representing the respondents and was

also attending the office daily, but she was neither allotted the work nor allowed to mark her attendance, she cannot be denied salary for the said period by invoking the principle of 'no pay for no work'. By treating the period of absence as without break in service is also affecting the petitioner for the reason that she is not being granted the increments and other service benefits of that period of no fault on her part.

11. Consequently, the present petition is allowed and impugned order dated 15.07.2009 (Annexure P-18) passed by respondent No.3 and order dated 12.10.2012 (Annexure P-24) passed by respondent No.1, are quashed and set aside. The respondents are directed to treat the petitioner on duly w.e.f. 18.07.2005 to 26.06.2006 and further salary of the aforesaid period be released in her favour along with all consequential benefits. Since the petitioner has retired from service, her pension be also revised. The arrears of salary and pension be paid to the petitioner within a period of six months from today, failing which, the same shall carry interest @6% per annum from today till actual payment. No order as to costs. Pending applications, if any, also stand disposed of.

08.09.2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**