

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) NO.439 OF 2011

Sri Sankar Bhattacharjee,
son of Sri Arun Bhattacharjee,
resident of Gandachara
Sub-Divisional Hospital Quarter,
P.O. Sharma(Gandachara),
P.S. Gandachara, District-Dhalai Tripura.

..... Petitioner

– Vs –

- 1. The State of Tripura,
represented by the Principal Secretary to the
Department of Health & Family Welfare,
Government of Tripura, having his office at
Capital Complex, Gurkhabasti,
P.O. Kunjaban, P.S. New Capital Complex,
Sub-Division : Agartala, District : West Tripura
- 2. The Director of Health Services,
Department of Health and Family Welfare,
Government of Tripura, having office at
Capital Complex, Gurkhabasti,
P.O. Kunjaban, P.S. New Capital Complex,
Sub-Division : Agartala, District : West Tripura

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	:	Mr. Somik Deb, Advocate				
For the respondents	:	Mr. S. Chakraborty, Addl. G.A.				
Date of hearing	:	09.06.2015				
Date of judgment & order	:	28.07.2015				
Whether fit for reporting	:	<table><tr><td>Yes</td><td>No</td></tr><tr><td></td><td>✓</td></tr></table>	Yes	No		✓
Yes	No					
	✓					

JUDGMENT & ORDER

By means of this writ petition, the petitioner has challenged the seizure list dated 15.06.2010 (Annexure P-2 to the writ petition), the memorandum under No.F.2.(167)/MS/ESTT-11/98(SUB) dated 04.10.2010 (Annexure P-3 to the writ petition), the memorandum under No.F.2.(167)/MS/ESTT-11/98(SUB)/11,111 dated 30.12.2010 (Annexure P-5 to the writ petition) and the order under No.F.2(167)/MS/Estt-11/98(SUB) dated 11.05.2011 (Annexure P-8 to the writ petition) alongwith the memorandum under the No. F.2(167)/MS/Estt-11/98 (Sub)/5546(V-I) dated 05.09.2011 (Annexure P-10 to the writ petition). It is urged further for releasing the increments those are withheld in terms of the order dated 11.05.2011 (Annexure P-8 to the writ petition).

2. While serving as the Laboratory Technician under the Health and Family Welfare Department, Government of Tripura having been posted at Gandacherra Sub-Divisional Hospital, Dhalai Tripura, the petitioner was alleged to have run a private pathological laboratory from his Government quarters for his personal gain.

3. The petitioner has, however, averred in the writ petition that the said pathological laboratory under the name and style of M/S Chinu Pathological Laboratory was owned by his wife. The said pathological laboratory had valid registration under the Tripura Clinical Establishment Act, 1976. The petitioner has admitted that on 15.06.2010, the Sub-Divisional Magistrate, Gandacherra searched the said pathological laboratory and seized some laboratory equipments viz. Microscope, Centifuse Machine, Colony Machine, Test Tube, Re-agent, Haemoglobino Instrument, Pipet and Wooden Table on preparing a seizure list (Annexure P-2 to the writ petition). On 04.10.2010 the Director of Health Services by the memorandum dated 04.10.2010 (Annexure P-3 to the writ petition) having referred the said search and seizure observed that during the search no document and license from the competent authority could be shown to the Sub-Divisional Magistrate, Gandacherra. It has been further observed that from the inquiry that had been conducted by the Chief Medical Officer (Dhalai) it has appeared that the petitioner was indulging in 'illegal practise'. By another report, the District Magistrate and Collector, Dhalai District has recommended that disciplinary action should be taken against such illegal activities. Hence, the petitioner was asked to explain his conduct as to why the disciplinary action should not be taken

against him for the activities as referred. The reply was directed to be submitted within seven days from the date of receipt of that memorandum. In the reply dated 12.10.2010, the petitioner has stated that he was doing 'pathological test' sometimes just for social purpose but those have been projected as the illegal activity from some quarters to malign him.

4. Thereafter, by the memorandum dated 30.10.2010, Annexure P-5 to the writ petition, the petitioner was afforded opportunity to make further representation as it was proposed to have taken action against him under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules 1965. By the said memorandum dated 30.12.2010 the following articles of charge was framed against the petitioner :

That the said Sri Sankar Bhattacharjee, while functioning as Laboratory Technician and posted at Gandacherra Sub-Divisional Hospital since 2003 to April,2010 shown lack of integrity and devotion to duty and acted in a manner which is unbecoming on the part of a government employee like his status. Sri Bhattacharjee while posted in the Gandacherra Sub-Divisional Hospital, has done laboratory practice at the Government quarter in the Hospital premises since 2003 without permission from the department and without license from the concerned authority as required for the purpose. It transpires from the report of District Magistrate and Collector, Dhalai District, Ambassa. As per instruction of the DM & Collector, Dhalai, Ambassa, the SDM, Gandacherra Sub-Division has conducted and

enquiry. From the enquiry report of the SDM, Gandacherra it reveals that Sri Bhattacharjee has set up Pathological Laboratory in the Government residential quarter and is doing pathological test on commercial basis even at office duty hours also.

As per instruction of the Director of Health Services, the Chief Medical Officer, Ambassa, Dhalai has conducted an enquire in to the matter of complain against Sri Sankar Bhattacharjee, Lab Tech, Gandacharra SD Hospital & submitted his report on 17.08.10. From the enquiry report of Chief Medical Officer (Dhalai) District it reveals that Sri Bhattacharjee, Lab, Technician, attached to the Gandacharra SD Hospital has set up a pathological Laboratory in the hospital quarter & doing private practice charging fees for the test. It is also reported that he is doing private practice in the duty hours result of which the patients in the duty hours result of which the patients are to wait for their test in the hospital. It is reported from the hospital staff on the same tone.

Dr. B.K. Sen, M.O. RCH & FW, State Health & F.W. Society has also conducted an enquiry as per direction of the Principal Secretary to the Government of Tripura & submitted his report vide his No. F.3(5-44)-FWPM/SHFWS/2007 (S-II), dated 18.11.10 to the Principal Secretary to the Govt. Of Tripura, HFW Department. According to enquiry report of Dr. Sen, Sri Sankar Bhattacharjee Lab. Techincian Gandacherra Sub Divisional Hospital has started his private pathological laboratory practice in the hospital quarter during 2003. Some time, Sri Bhattacharjee does his private practice during office hours and attendant has to call him from his private practice during office hours and attendant has to call him from his private laboratory for hospital duty. Sri Bhattacharjee some time asked the patients to do investigation from his Private Laboratory.

By the above activity Sri Sankar Bhattacharjee, Laboratory Technician, Gandacherra Sub-Division Hospital has shown gross negligence in duty and lack of integrity and & devotion to duty which is unbecoming on the part of a Govt. Employee and thereby violated Rule-3 of the Tripura Civil Services (Conduct) Rules, 1988.

5. With the said memorandum dated 30.12.2010, the statements of imputation or misconduct or misbehavior were also enclosed providing the details of the misconduct. From the Government quarters, the petitioner was carrying on the private practice, charging fees for the test. The Sub-Divisional Magistrate, Gandacherra inspected the quarter of the petitioner on 15.06.2010 and seized the laboratory equipments and seal etc. Dr. B.K. Sen, Medical Officer, RCH and FW, State Health and FW Society had carried out an inquiry independently as per the direction of the Principal Secretary to the Government of Tripura, Health and Family Welfare and submitted his report on 18.11.2010. From the inquiry report as furnished by Dr. B.K. Sen, it has surfaced that the petitioner started his private pathological laboratory practice in the hospital quarters in 2003. Even the petitioner was carrying on such practice during the hospital hours.

6. The petitioner, by filing the written representation, has denied the allegations and stated that the said laboratory was established by his wife, namely Chinu Goswami with the

valid registration under the Tripura Clinical Establishment Act. But the petitioner has not disclosed in the said reply whether his wife is a competent technician for carrying out the pathological test in that laboratory or not. The petitioner has categorically admitted that he looked after and carried out test after completion of his assigned duty in the Gandacherra hospital. After the said reply was received, the petitioner was further asked to appear in person before the disciplinary authority, the Director of Health Services to be heard in person. Thereafter, by the order dated 11.05.2011, the Director of Health Services has passed a detailed order placing his reliance on the papers disclosed to the petitioner viz., the inquiry report dated 19.04.2010 submitted by the District Magistrate and Collector, Dhalai District and the inquiry report dated 17.08.2010 by the Chief Medical Officer, Dhalai. From those reports it has surfaced that the petitioner was carrying on the private practice from the Government quarters by setting up a pathological laboratory. Equipments and appliances were seized by the Sub-Divisional Magistrate on 15.06.2010. Again Dr. B.K. Sen conducted an inquiry and from his report dated 18.10.2010, submitted to the Principal Secretary Health, it transpired that the petitioner had been carrying on a business of pathological laboratory from his Government quarters. The findings in those reports were duly

disclosed to the petitioner calling upon him for giving proper reply but the reply as submitted by the petitioner on 12.10.2010 did not satisfy the disciplinary authority. Hence, the minor penalty withholding the two future increments has been passed by the disciplinary authority.

7. Being aggrieved by the said penal action by the order dated 11.05.2011, the petitioner filed an appeal under Rule 23 of the CCS (CCA) Rules, 1965 to the Principal Secretary, Government of Tripura, Department of Health Services. In the appeal, he has admitted that he had been assisting his wife for carrying out the laboratory test, but he was never negligent in his official duty.

8. The said appeal was dismissed by the appellate authority and the outcome was communicated to the petitioner by the memorandum dated 05.09.2011.

9. Mr. Somik Deb, learned counsel appearing for the petitioner has submitted that without any inquiry, the disciplinary authority has imposed the penalty for the misconduct which the petitioner had specifically denied. He has further submitted that no reasonable opportunity was given to the petitioner. Hence, the impugned orders are liable to be interfered with. He has further contended that if this court held that the proper procedure was not followed, the matter may

not be remanded for further inquiry or for a fresh inquiry after such a long time as the final order was passed by the disciplinary authority on 11.05.2011. In support of this contention, Mr. Deb, learned counsel has relied on a decision of the apex court in **Mansukhlal Vithaldas Chauhan Vs. State of Gujarat**, reported in **(1997) 7 SCC 622**. In that report, the apex court while considering a defective sanction for prosecution, held that after a lapse of '14 years' it would not be just and fair to direct initiation of the fresh proceeding from the stage of reconsideration by the sanctioning authority and that would expose the accused to a fresh round of litigations for indefinitely long period.

10. Appearing for the respondents, Mr. S. Chakraborty, learned Addl. Govt. Advocate has submitted that the requirement of Rule 16 of the CCS (CCA) Rules, 1965 has been meticulously followed by the disciplinary authority. He has contended further that the petitioner has admitted that he was running a pathological laboratory and he was doing the laboratory test, but the said pathological laboratory was registered in the name of his wife. Mr. Chakraborty, learned Addl. Govt. Advocate has stated that in the first reply what the petitioner had stated is that he was doing laboratory test for the relief of the poor people and just for social purpose and he had denied in that reply dated 12.10.2010 that he did ever

carried out the pathological test professionally at his quarters, but later on he admitted that he was doing the pathological test in his quarters, in the same laboratory which was registered in the name of his wife. It is therefore clear that the petitioner has admitted his misconduct. Even then the disciplinary authority has taken lenient view by withholding two future increments without cumulative effect by the impugned order dated 11.05.2011.

11. Having due regard to the submission made by the learned counsel for the parties as well as to the records, this court is of the view that the petitioner has minced the words to evade the specific reply to the charge as brought against him by the impugned memorandum dated 30.12.2010, Annexure P-5 to the writ petition, and he has admitted that he was carrying out the laboratory test for commercial purpose from his Government quarters. It has surfaced that he was doing his practice during duty hours. From the report of the Chief Medical Officer that aspect has come to the fore. Thus, in the considered opinion of this court, the disciplinary authority has afforded the petitioner adequate opportunity before passing the impugned order dated 11.05.2011, Annexure P-8 to the writ petition. In the circumstances, no interference is called for.

12. Hence, the writ petition is dismissed. However, the laboratory equipments seized by the Sub-Divisional Magistrate, Gandacherra, by means of the seizure list dated 15.06.2010, Annexure P-2 to the writ petition, shall be returned to the petitioner within a period of a month from today, if those are not already returned.

There shall be no order as to costs.

JUDGE

Sabyasachi B.