NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No.5931 of 2008

Dr. Smt. S. Birthare, W/o Shri V. N. Birthare, Aged about 56 years, Occupation-Female Medical Officer, Primary Health Centre, Portha, District Janjgir-Champa, Resident of Lions School Road, Champa, District Janjgir-Champa (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh through Secretary, Health and Family Welfare, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. Director, Health Services, Old Nurses Hostel, Behind Mantralay, Raipur (CG)
3. Chief Medical Officer/ Hospital Superintendent, Distt.-Janjgir-Champa (CG)
4. District Health Officer District Janjgir-Champa (CG)

---- Respondent

For Petitioner : Shri Sunil Tripathi, Advocate
For Respondent/State : Shri S. P. Kale, Dy.A.G.

Order On Board

24/08/2015

Heard.

2. By this petition, the petitioner has assailed correctness and validity of order dated 28-08-2008 passed by the respondent in Departmental Enquiry, by which, the petitioner has been dismissed from service on the ground of unauthorized absence. The petitioner has also challenged legality and validity of order dated 26-05-2004, by which, the petitioner's application (Annexure P-13) for voluntary retirement has been rejected.

3. Necessary facts of this case are in narrow encompass.

4. The petitioner was working as Assistant Surgeon in the Health Department of

the State Government. There were allegations that the petitioner was remaining unauthorizedly absent from duty. According to the department, the petitioner remained unauthorizedly absent from her duties ever since 10-12-1996. As the petitioner did not report for duty, the department initiated enquiry against the petitioner by issuing charge sheet dated 29-11-2004 (Annexure P-14). The petitioner submitted her reply to the charge sheet on 11-01-2005 (Annexure P-15). It is worth mentioning here that the petitioner had earlier moved an application for voluntary retirement, which came to be rejected by the State Government vide order dated 26-05-2004 (Annexure P-13).

5. By order dated 01-08-2008 (Annexure P-16), the Chief Medical and Health Officer appointed the District Family Welfare cum Health Officer, Janjgir as Enquiry Officer and Civil Surgeon cum Chief Hospital Superintendent, District Hospital, Janjgir Champa as Presenting Officer. However, thereafter, the petitioner came across the impugned order, by which, the penalty of dismissal from service on account of unauthorized absence was imposed. It is this order, which is under challenge in this case.

6. Contention of learned counsel for the petitioner is that after appointment of Enquiry Officer and Presenting Officer, no material progress took place in her departmental enquiry much less leading to oral and documentary evidence either by the prosecution or any opportunity afforded to the petitioner to lead oral and documentary evidence in her defence. Referring to memo dated 04-09-2008 (Annexure P-18), it is submitted that the Enquiry Officer, without affording any opportunity, without holding any enquiry, of his own, sent the enquiry report to the State Government on 04-09-2008, but the impugned order of dismissal from service has been passed even before that on 28-08-2008. Thus, the entire departmental enquiry is violative of the mandatory provisions contained in Rule 14 of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (In short " the Rules of 1966").

7. Per contra, submission of learned State counsel is that in the enquiry, the petitioner was afforded due and proper opportunity of hearing. In view of the apparent material on record that the petitioner had remained unauthorizedly absent since long, the Joint Director had already sent the enquiry report to the Government vide memo dated 23-02-2007 (Annexure R-7), on which basis, the State Government proceeded to pass the impugned order. Therefore, the order does not warrant any interference.

8. This Court has examined the pleadings and documents placed by the parties as also the original records of enquiry, which were placed for perusal by the learned Deputy Advocate General.

9. After perusing the aforesaid records, this Court finds that there was farce of enquiry in the matter. The charge sheet was issued to the petitioner vide memo dated 29-11-2004. Reply of the petitioner was filed. Thereafter, the matter remained pending. The records of departmental enquiry, which have been placed before this Court, reveal that the matter was being listed before the Enquiry Officer on various dates, but it does not talk of any evidence led by the prosecution or opportunity afforded to the petitioner to lead defence witness.

10. The order dated 01-08-2008 (Annexure P-16) passed by the Chief Medical and Health Officer shows that the District Family Welfare Officer and Health Officer, Janjgir was appointed as Enquiry officer and Civil Surgeon cum Superintendent of District Hospital was appointed as Presenting Officer. However, the respondents have come out with memo dated 23-02-2007 (Annexure R-7) sent by the Joint Director, Health Services to the Government stating that enquiry report in the matter of departmental enquiry leveled against the petitioner is being forwarded.

11. It is beyond comprehension of this Court as to how enquiry report could be prepared by an officer, who was not the Enquiry Officer and that too without there being any enquiry held in the matter. The records, which have been placed before the Court, did not talk of any enquiry report prepared by the Enquiry officer, who was

appointed vide order dated 01-08-2008.

12. Obviously, during the pendency of the departmental enquiry against the petitioner, whole enquiry was taken over by the Joint Director and he himself appears to have prepared the report and sent it to the Government, on which basis, the impugned order has been passed. It is interesting to note that the enquiry officer has sent the enquiry report to the government vide its memo dated 04-09-2008 (Annexure P-18). Irrespective of challenge to this enquiry report on the ground that such report was prepared without affording any opportunity of hearing to the petitioner, this so-called report has not seen the light of the day. It was neither supplied to the petitioner nor such report has been placed before this Court.

13. In view of above, it is clear that while departmental enquiry was pending against the petitioner, some other authority sent the report to the government which led to passing of impugned order. This kind of procedure is completely violative of procedure contemplated under Rule 14 of the Rules of 1966.

14. In the result, this is obvious that the impugned order cannot be sustained in law and therefore, set aside. However, considering that the charge sheet was issued to the petitioner and the petitioner had submitted his reply to the Enquiry Officer appointed vide order dated 01-08-2008, the enquiry officer shall hold due and proper enquiry, after affording the petitioner due and proper opportunity of hearing to lead oral as well as documentary evidence and then forward enquiry report to the State Government, whereafter the State Government would be at liberty to pass appropriate order in accordance with law in the matter of departmental enquiry.

15. The enquiry shall be completed within a period of six months from the date of receipt of a copy of this order. Considering that the impugned order has been set aside only on the ground of violation of principles of natural justice, at this stage, I am not inclined to grant any monetary relief to the petitioner.

16. As far as challenge to the order rejecting petitioner's application for grant of voluntary retirement is concerned, the order rejecting application for voluntary retirement was passed way back on 26-05-2004 but the petitioner did not challenge the said order within a reasonable period and it is only when the order of dismissal from service was passed, the petitioner re-agitated the said issue. Therefore, only on the ground of delay and laches, challenge to the order dated 26-05-2004 is liable to be rejected.

17. Accordingly, the petition is partly allowed.

Sd/-
Manindra Mohan Shrivastava
Judge

Tumane