

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.10482 of 2013 (O&M)
Date of decision : 15.05.2015

Kamaljeet Mor

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Ms. Anu Chatrath Kapur, Senior Advocate with
Ms. Rumpa Gharai Saha, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G. Haryana.

AMIT RAWAL, J. (Oral)

Challenge in the present writ petition is to the impugned order dated 23.01.2012 (Annexure P-11), whereby petitioner has been dismissed from service from the post of Lab. Technician (Malaria) by invoking provision of Article 311 of the Constitution of India and as well as order dated 16.11.2012 (Annexure P-17), whereby legal notice sent by the petitioner has also been rejected.

Ms. Anu Chatrath, learned Senior Counsel assisted by Ms.

Rumpa Gharai Saha submits that the petitioner possessed qualification of 10th, 12th and B. Pharmacy which he acquired from the Boards/Universities.

In pursuance to the advertisement bearing No.5 of 2007, petitioner had applied for the post of Laboratory Technician under the general category being fully eligible and qualified. The petitioner was issued roll number and thereafter called for interview on 11.05.2009 and his case was recommended by the Secretary, Haryana Staff Selection Commission, Panchkula and on the said recommendation, an appointment in the pay scale of Rs.5200-20200+2400 Grade Pay + usual allowances vide letter dated 07.01.2011 was issued.

The petitioner joined as Laboratory Technician Malaria in CHC (Community Health Centre), Jhonjukalan (Bhiwani) on 20.01.2011. The petitioner is stated to have taken admission for completing his B. Pharmacy course in the month of 2009. In essence, when the petitioner submitted the application in 2007, the petitioner had not taken any admission and, therefore, no occasion arose to disclose in the application form in the year 2007.

Since the petitioner was undergoing classes of B. Pharmacy, and had to complete his course, petitioner vide application dated 09.08.2011/10.08.2011 applied for long leave for completion of study. Letter thus read as under:-

"Through Proper Channel

10.08.2011

To

*The Director General, Health Services,
Haryana, Panchkula,
Sector-6.*

*Subject:- Regarding Long leave for completion of
studies.*

Respected Sir,

*It is respectfully that before joining the
Govt. service I was doing B. Pharmacy. During that
period I got the Govt. job due to which last year is yet
to be completed. For which I need one year long leave
so that I can complete my study, therefore, my leave
may kindly be sanctioned w.e.f. September 2011 to till
the end of the session of 2012.*

Thanking your.

*Encl. Photocopy of the C.S.I.R. Instructions with
regard to above.*

Sr. No.868 Dated 10.8.2011 Yours Sincerely,

*Kamaljeet Mor,
Lab Technician (Malaria)
Community Health Centre,
Mundlana (Sonipat)
09.08.2011
L.T. (Malaria)
CHC, Mundlana"*

Letter was submitted through proper channel i.e. to
Director General Health Services, Haryana, Panchkula Sector-6. The
petitioner waited for outcome of the letter but no response or accord
had been given. Accordingly, he proceeded on leave on 01.09.2011 by
submitting application. Contents of the same read thus:-

“To

*The Senior Medical Officer,
Community Health Centre,
(Sonepat)*

Subject:- Relieving information.

Respected Sir,

It is respectfully that I am going on leave without pay w.e.f 01.09.2011 to 31.05.2012 for completion of my B. Pharmacy last year. So, I am giving my relieving application for your information today dated 01.09.2011 forenoon. Please accept the same.

Yours Sincerely,

Estt. Sd/- 01.09.2011

*Kamaljeet Mor,
Lab Technician (Malaria)
Community Health Centre,
Mundlana (Sonipat)
09.08.2011
L.T. (Malaria)
CHC, Mundlana
9992579205*

Endst. No.920

Dated 01.09.2011

Forwarded to Director Health Service, Malaria for information and necessary action."

The petitioner was astounded to receive the impugned letter dated 23.01.2012, whereby he was dismissed from the service i.e. from the post of Laboratory Technician (Malaria) by invoking provision of Article 311 of the Constitution of India. The father of the petitioner is stated to have submitted representation dated 27.01.2012 (Annexure P-

12). In response to the aforementioned representation, the Government

of Haryana obtained the opinion from ADA, who gave its opinion on 31.01.2012, which read thus:-

"In view of factual position explained at NP/8-12, it is a fit case for reviewing. The matter in the ends of justice, for which W/DGHS is competent being appointing authority.

Sd/- 31.01.2012"

On the basis of the opinion on 10.02.2012, Additional Director (Admin) placed the matter before the Director General Health Services by stating, therein, that the petitioner had submitted application for going on leave and without considering the said application, impugned order dated 23.01.2012 dispensing his services, had been passed. The noting portion reads thus:-

"Govt. of Haryana

Please refer order of DGHS at NP 6 vide which he has agreed with the proposal of DHS (M) that Sh. Kamaljeet Mor, LT (Malaria) is under the probation period and his services may be dispensed with without issuing a charge-sheet under Rule-1 since he is on unauthorized absence from the office since 01.09.2011. Accordingly office has issued order dated 23.01.2012 for the dispensing of the services of delinquent employee.

Please peruse the N/P 8 to 12 and then the service of ADA both have submitted the file to DGHS for reviewing the order dated 23.01.2012 on the ground that the delinquent employee has requested the department for extra ordinary leave vide his

request dated 09.08.2011 which was forwarded by the Senior Medical Officer but this office could not receive the same and in this mis-communication the fatal orders of the dispensing of the services was issued. The employee sought admission in B. Pharmacy before joining at L.T (M) and he is left with part of the course. He has requested that giving extra ordinary leave for study period as per Chief Secretary instructions dated 18.07.1972 placed below to complete the left over course which will be of use to the department.

Now the file is submitted for reviewing the order dated 23.01.2012 in the light of employee's request dated 25.01.2012 and his leave application dated 09.08.2011 in pursuance of Chief Secretary's Instructions dated 18.07.1972.

If agreed, his leave from 01.09.2011 to 31.09.2012 may be sanctioned by rescinding the order dated 23.01.2012 regarding dispensing with his service so that employee may complete his remaining course and concerned assistant of the seat Smt. Anita may be adviced not to submit the incomplete case to the authority in future.

*Sd/- 10.02.2012
Addl. Director (Admin)*

*DGHS
Sd/- 10.02.2012
Sd/- DHS-M 13.02.2012
Sd/- Supdt. 14/2 "*

Ms. Anu Chatrath, learned senior Counsel has drawn attention of this Court to Annexure P-4, the instructions dated 18.07.1972 issued from the office of Chief Secretary, Government of

Haryana to All Heads of Departments, whereby advice was given as to how instructions were issued, and the mode & manner the application for leave sought to be accepted/dealt with. Instructions aforementioned read thus:-

"Copy of letter No.3712-2CS-II-72/21209 dated Chandigarh the 18.07.1972 from the Chief Secretary to Government of Haryana to All Heads of Departments ; Commissioners Ambala Division ; All Deputy Commissioners and Sub Divisional Officers (Civil) Haryana.

Subject:- A requisition of Higher Educational qualification Permission to Govt. Servants.

I am directed to invite your attention to the instructions consigned in the composite Punjab letter No.13987-5-GS-61/43360, dated the 4th December, 1961 (Copy enclosed) on the subject noted above. It has been noticed that Govt. employees who are permitted to join academic instructions/appear in examinations proceed on leave on one pretext or the other, for a major part of the year in order to make preparations. As this tendency is undesirable and effects Government work adversely, it has been decided to place certain restrictions on permission accorded to Government employees in this respect, as under:-

(i) Adhoc employees should not be permitted to join courses or appear in examination.

(ii) Only those regular employees who have completed 5 years of service should be accorded such permission. In reckoning the 5 years period service

rendered by the employee in any other Office/Department of Government should also be considered.

2. However, those regular employees who have already been permitted to join a particular course of study, or who were studying for a particular course at the time they joined Government service, should be allowed to complete that course, without the necessity to having to obtain any permission.”

To sum up, learned Senior Counsel submits that the impugned order is wholly untenable, arbitrary, much less, illegal & thus liable to be set aside. Mr. Hitesh Pandit, Addl. A.G. Haryana submits that the petitioner was enjoined upon obligation to disclose to the respondent-authorities that at the time of joining, he was undergoing the classes of B. Pharmacy and, therefore, since the probation period had not expired, the order of dismissal is perfectly legal and in accordance with law. There is no illegality and perversity in the said order. No interference is called for invoking the extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India. He further submits that leave of the petitioner was cancelled vide letter dated 03.10.2011/31.10.2011 (Annexures P-8 & P-9). The petitioner was communicated about the same vide letter dated 06.12.2011 (Annexure P-10).

I have heard learned counsel for the parties and appraised the paper book.

It is a matter of record that for gaining higher qualification, the petitioner had taken a admission for B.Pharmacy course in May 2009, whereon, the application for interview was submitted wayback in the year 2007, therefore there was no occasion for the petitioner to disclose at that point of time.

After submitting the joining report in January 2011, on 10.08.2011 vide Annexure P-5 an application for going on long leave w.e.f. 01.09.2011 to 31.05.2012 for completing his B. Pharmacy course being the last year without pay, was submitted. The said letter was submitted to the Senior Medical Officer, Community Health Centre (Sonepat) which was forwarded to the Director Health Services, Malaria for information and necessary action.

The petitioner after waiting for 20 days assumed that the leave, deemed to have been granted, but later on acquired that the said application was rejected on 03.10.2011/31.10.2011 (Annexure P-8 & P-9) and the same was communicated to him on 06.12.2011 (Annexure P-10) and, whereby, he was dismissed from service on 23.01.2012 (Annexure P-11). The petitioner is stated to have sent the legal notice (Annexure P-16) on 26.09.2012 and the same was also rejected vide impugned order dated 16.11.2012, whereby the respondent-authorities reiterated the stand taken in the impugned letter vide which petitioner was dismissed from the post of Laboratory Technician (Malaria).

As per the instructions extracted supra, the regular employees who have completed 5 years of service are permitted to be

seek admission but as per permission No.2 i.e. employees who have been permitted to join a particular course of study at the time of joining of Government service, they may be permitted to complete the course without the necessity of obtaining any permission.

Be that as it may. In the instant case, the petitioner has applied for permission to go on leave and the same was not considered, much less, rejected almost after lapse of almost two months. At that point of time, the petitioner had already proceeded on leave on 01.09.2011. The controversy do not rest here, inasmuch as that, on the basis of representation submitted by the father of the petitioner, legal opinion was sought and the matter was placed before Director General Health Services for revival of the order of dismissal on the ground that authorities while dismissing the services of the petitioner did not consider the application for obtaining leave. The noting portion (supra) reveals that authorities later on found that the petitioner had moved an application for leave but no action had been taken thereon in essence application of the petitioner left undecided before proceeding on leave.

The impugned order indicates that the petitioner remained absent during the period he was on probation and, since his leave had been cancelled it was suggested that the disciplinary proceedings should be dispensed with and instead the authorities invoked provision of Article 311 of the Constitution of India. The authorities was required to record satisfaction, much less, by giving a opportunity of hearing, but no satisfaction had been recorded.

Be that as it may, even in the legal notice dated 26.09.2012 (Annexure P-16), the petitioner has categorically mentioned about the matter being taken up for review of the impugned order by Additional Director (Admin) but, yet, the authorities remained oblivious qua aforesaid recommendations.

In view of what has been observed above, the order of dismissal of the petitioner from service is held to be capricious, arbitrary, illegal much not sustainable as it had been passed without considering application for obtaining leave.

Impugned orders dated 23.01.2012 (Annexure P-11) dismissing the petitioner from service, order dated 16.11.2012 (Annexure P-17), whereby legal notice has been rejected are hereby quashed.

Accordingly, writ petition is allowed.

The petitioner shall be deemed to be in service and shall be entitled to all consequential benefits, if permissible.

15.05.2015

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**(AMIT RAWAL)
JUDGE**