

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 24207-CAT of 2012 (O&M)

Date of decision : 30.4.2015

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Postgraduate Institute of Medical Education and Research, Sector 12,
Chandigarh through its Director and another

.....Petitioners

vs.

Central Administrative Tribunal, Chandigarh Bench
and another

.....Respondents

**Coram: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

Present: Sh. Rajesh Garg, Senior Advocate with
Ms. Nimrata Shergil, Advocate for the petitioners.

Sh. Manish Dadwal, Advocate for respondent No.2

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P.B. Bajanthri, J.

In CWP No. 24207-CAT of 2012, the petitioners (PGIMER) have questioned the validity of the order dated 16.8.2012 passed by Central Administrative Tribunal, Chandigarh Bench, in O.A. No. 681/CH/2011. In CWP No. 2527 of 2013 Dr. Kamlesh Kumar has sought for the following relief:-

“i) Writ in the nature of certiorari to quash order dated

16.08.2012 (Annexure P-2) passed by Learned Tribunal qua to declining of the back wages concerning to the period when petitioner remained under termination till the order of the reinstatement and further while granting back wages, the Hon'ble Court may grant interest keeping in view the facts and circumstances set out in the petition.

ii) xxx	xxx	xxx
iii) xxx	xxx	xxx
iv) xxx	xxx	xxx
v) xxx	xxx	xxx
vi) xxx	xxx	xxx”

In so far as the second CWP No. 2527 of 2013 is concerned, a separate order has been passed.

Brief facts of the case are that petitioners invited application from the eligible candidates for recruitment to the posts of Senior Resident for various departments. On 30.6.2010, 90 doctors were appointed as Senior Resident. 2nd respondent is one among them. The 2nd respondent was appointed in the Pathology Department. The appointment order stipulated amongst others, the following relevant terms and conditions:-

“1. The tenure of the post is for three years including the period of Senior Residency already serviced/done, if any, under the recognized Central Institute(s). Further it

shall be subject to annual review and extended on year to year basis on satisfactory completion of the service(s) of the said year.

2. The present term of your appointment is upto 30.06.2011.”

In terms of the appointment order, the 2nd respondent could not report timely and he sought time and as soon as he received appointment order, further time to report for duty was sought and accepted. Accordingly, the 2nd respondent joined service. For personal reasons, the 2nd respondent prayed for leave from 27.9.2010 to 24.10.2010 and 25.11.2010 to 8.12.2010. In this regard, show cause notice was issued seeking explanation of the 2nd respondent for which he furnished reasons for applying leave, one of the reason was that he himself was suffering from Rt. shoulder dislocation and deltoid tendon rupture during the period from 27.9.2010 to 24.10.2010. In this regard he statedly informed telephonically to Senior Resident Histopathology to convey the message to the Head of the Department. It was also informed by him that he had furnished medical certificate alongwith previous leave application. In so far as seeking leave from 25.11.2010 to 26.11.2010 is concerned, the 2nd respondent explained that his mother was seriously ill, therefore, he rushed to attend her medical need. In this regard also, he informed the Head of Department, Histopathology over telephone. Further a show cause notice was issued on 16.2.2011 stating that the 2nd respondent left the institute without getting the leave sanctioned by competent authority,

thereby 2nd respondent had committed misconduct. It was also intimated in the show cause notice to furnish explanation within 7 days, as to why his services may not be terminated at the Institute under the rules. The 2nd respondent reiterated his statement/reasons for applying for leave and not reporting to duty beyond the leave period stating that it was beyond his control and sought for withdrawal of the show cause notices dated 16.2.2011 and dated 20.6.2011, since both the notices were issued without considering the genuine reasons cited and so also the documentary evidence like medical certificates and request for taking a lenient view in the matter. In this background, on 30.6.2011, the 2nd respondent was relieved from service of the Institute stating that it was consequent upon the expiry of the term of his appointment. The 2nd respondent aggrieved by the order of relieving filed Original Application before the Central Administrative Tribunal, Chandigarh, which was numbered as OA No. 681/CH/2011. On 16.8.2012 the Original Application was allowed in the following terms:-

“14. In view, however, of the fact that the applicant did not function following his termination, he would not be entitled to any wages for the intervening period. He shall, nonetheless, be restored to job as if Annexure A-1 had not been granted. It would be open to the competent authority to consider the feasibility of dropping the relevant proceedings altogether and further consider the feasibility of granting an appropriate order which would

be innocuous and non-stigmatic not only on the face of it but also in fact.”

The petitioners dissatisfied by the order passed in OA No.681/CH/2011 dated 16.8.2012, filed the present Civil Writ Petition.

The petitioners' counsel heavily relied on two aspects, one is conduct of the 2nd respondent i.e. remaining absent without informing and the other one is that as per the order of appointment the 2nd respondent's tenure was completed on 30.6.2011. Consequently, there is no infirmity in the order of relieving the 2nd respondent from the post of Senior Resident in Pathology Department. It was further argued that the order of the Tribunal is incorrect as there is no stigmatic order as the 2nd respondent has been relieved in terms of the appointment order.

Per contra, the contesting respondent's counsel vehemently submitted that it was a stigmatic order, since various factual aspects relating to the absence of 2nd respondent have been taken note of before relieving him. He contended that the Tribunal rightly came to the conclusion that relieving order read with background of the case, amounts to stigmatic order. Therefore, there is absolutely no infirmity in the order of the Tribunal.

We have perused the records. The petitioners failed to appreciate the reasons for applying for leave and staying back beyond the leave period by the 2nd respondent which was beyond his control.

The 2nd respondent has assigned the reasons for the first spell that he

had Rt. shoulder dislocation and deltoid tendon rupture, for which he had taken treatment and also necessary medical certificates were furnished along with leave application. It is not that the 2nd respondent did not inform the concerned Head of the Department. In so far as second spell is concerned, he explained that his mother suffered heart attack (stroke) and she is alone, therefore, he was compelled to attend her medical need. In this regard also he made necessary leave application and also information furnished to the Head of the Department stating that he was compelled to stay back beyond the leave period and also furnished necessary medical certificates.

Perusal of the record, we find that 2nd respondent had applied for the post of Senior Resident. In his application paragraph 16 relating to details of parents/spouse, he has shown that Smt. Rama Devi, as his mother, who is aged about 70 years and she is a house wife. It seems that his father is not alive and the 2nd respondent has not married. This information indicates that 2nd respondent's mother was wholly dependent on him. Therefore, the absence of 2nd respondent beyond the period of leave was beyond his control. The petitioners failed to appreciate these factual aspects before taking drastic step of relieving the 2nd respondent.

We have perused one more document from the records dated 24.11.2010 of the 2nd respondent, which is relating to sanction of casual leave from 25.11.2010 to 26.11.2010. On the said leave application/request, it is recorded by one Sh. K. Joshi, as follows:-

“Chairperson Group C.

With comments that he has not joined duty but has telephonically informed that his mother is unwell (had stroke)”

Vide note dated 29.11.2010. It was also made a note that his tenure is for one year to be renewed on satisfactory conduct during the stay. He has been absent frequently without any information. His service may be terminated as it amounts to indiscipline and affects the working of the department, vide note dated 1.12.2010.

Taking note of these events, the petitioners thought of getting rid of the 2nd respondent, therefore a simple relieving order was passed in terms of the appointment order. The object behind the exercise is apparently to punish the 2nd respondent for his absence from duty. On one side the petitioners did not appreciate the reasons for 2nd respondent's absence, on the other hand they did not hold any fact finding enquiry in respect of absence beyond the leave period and so also beyond the control of the 2nd respondent.

It is to be noted that as per the condition No.1 in the appointment order, there were nearly nine doctors in Pathology Department and eight doctors tenure was extended till 30.6.2012 on 20.6.2011. The contention of the petitioners that the 2nd respondent has been relived in terms of appointment order, is incorrect for the reasons that the condition No.1 fixes the tenure of appointment for a period of 3 years and initially for a period of one year and it would be extendable year wise. Therefore, even looking from this angle that

the 2nd respondent had completed his tenure on 30.6.2011 and he was so relieved, is thus unbelievable and untrue. The dates and relatable events, pertaining to the 2nd respondent's service in the petitioners' Institute, it stands unveiled that some how petitioners wanted to get rid of the 2nd respondent's service on the sole reason that he was habitual absentee. The action of the petitioners in relieving the 2nd respondent, when looking at the records, appears to be arbitrary, pre-judged and punitive. We, therefore, find no infirmity in the order of the Tribunal.

We uphold the order of the Central Administrative Tribunal, Chandigarh and the Civil Writ Petition is thus dismissed. We further direct the petitioners that if other doctors who were appointed along with the 2nd respondent, are still continued in service then the services of the 2nd respondent be also continued on par with them.

No order, as to costs.

(**Surya Kant**)
Judge

(**P.B. Bajanthri**)
Judge

30.4.2015.
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