

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 06.12.2016****CWP No.25210 of 2016**

Dr. Sonia

...Petitioner

Vs.

State of Haryana & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. R.K.Malik, Senior Advocate, with
Mr. Bhupinder Malik, Advocate, for the petitioner.**RAJIV NARAIN RAINA, J.**

The name of the petitioner was recommended by the Haryana Public Service Commission for appointment as Dental Surgeon in a process of direct recruitment. The Government accepted the recommendation and offered the post vide letter dated 30.12.2013. On the day following joining service, the petitioner made a request that she may be granted extraordinary leave from 22.01.2014 to 30.06.2016 to enable her to complete her ongoing MDS course, which she was pursuing before and during the selection process. As she did not turn up for duty thereafter, she was warned by a letter dated 08.05.2014 to resume her duties. The petitioner rejoined on 16.05.2014. On 02.09.2014, she made a request that she would have no objection if she was granted leave without pay till the completion of MDS course. Thereafter, the petitioner disappeared from the scene without pre or post information to the respondent Department or obtaining orders.

Mr. R.K. Malik, learned senior counsel appearing for the petitioner, argues that she was within a right to presume that the request for leave without pay would be deemed to be accepted since nothing was given

to her in writing by the office rejecting the prayer. This argument is fallacious and is built on a false notion that an office runs on deemed fictions and is thus rejected. It is the duty of the Government employee to elicit orders and then act accordingly. There is no order passed by the Government in writing placed on record permitting her to continue her studies and to keep her dental chair warm for her return. Therefore, acceptance could not be read by default. After a rather long silence till 30.04.2016, the petitioner filed a representation that she would complete her MDS course by 30.06.2016 and she may be allowed to join her duties w.e.f. 01.07.2016. By this time, three years had gone by. There was no response from the Government which brought her to file another representation on 22.11.2016. On this letter, she was informed by the Department that her services have already been dispensed with vide order dated 12.09.2014/16.10.2014.

Mr. Malik relies on the instructions dated 18.07.1972 (Annex P-4) to propagate his contention by aid of this Govt. letter. These executive instructions deal with the subject of 'Requisition of Higher Educational qualifications and Permission to Government Servants'. The relevant extract of the instructions reads as follows:

"I am directed to invite your attention to the instructions contained 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 Government 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) Ad hoc 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.”

I wonder how these instructions would apply to the case of the petitioner. The instructions operate only when permission is granted to a serving employee to join academic institution or appear in examination. The instructions place restrictions and it is only the regular employees, who have completed 5 years of service, should be accorded such permission to pursue further studies. The petitioner was already pursuing MDS course when she was selected. Therefore, the question of prior permission demanded by the instructions does not arise in this case. These instructions are of no help to the petitioner. If she applied for leave without pay, then there is no presumption such leave was granted. If the impugned order records that the petitioner is intentionally and willfully absenting herself from duty to make way for a relief-based ground, then I am afraid it was not even necessary for the Government to pass an order in writing, when the act and conduct of the petitioner show eminently that she actually and willfully abandoned service on the pretext of completing her higher studies, that too without intimation of her whereabouts, surfacing only to make representations to secure her job. The law on abandonment of service and the legal necessity of passing orders in writing by the authorities faced with such a situation is explained by the Supreme Court in Vijay S. Sathaye v. Indian Airlines Ltd, (2013) 10 SCC

253 holding absence for a long period may amount to voluntary abandonment of service resulting in termination of service automatically without necessitating any further action or order from the employer.

On giving my thoughtful consideration to the matter and having regard to the law in *Sathaye*, I find sufficient reason to apply the ratio of the ruling against the petitioner to hold that she voluntarily abandoned her job and was obviously not serious enough to join service. Thereafter, finding a lame excuse to avoid work by pursuing her advanced studies, to which, of course, she had every right to complete, but not at the cost of expecting employment by relaxation of rules. If the petitioner was marking her career, she had every right to promote it as per her wishes but not to sacrifice the competing interests of a candidate in waiting who could have been picked up instead to fill the vacancy before it was consumed by the petitioner by a trick played to block, or put better still, to book the job for her future reference. Time and tide wait for none and most certainly not in scarce public employment where public interest is involved. As often said, private interest must yield to public interest.

Mr. Malik's argument that the petitioner gave in writing that she will not claim any salary for the period of absence and would serve the State Government after passing the MDS course is neither here nor there and is not enough reason to put the State to notice in this case. She could not as a matter of right claim maintenance of status quo till she was available to join service after she completed her course. By then the job was out of the pen and could no longer be corralled by a stroke of the court's pen.

The last effort to salvage the case of the petitioner is shortage of Dental Doctors in the State of Haryana as justification for permission to join service. Mr. Malik pleads that since there is a shortage of dental doctors in

the State therefore her case can be still be accommodated by the Government on sympathetic and humanitarian grounds. If this is so, it is always open to the petitioner to file a mercy petition to the State Government for its consideration in accordance to law. Beyond that, this Court can say no more.

Consequently, and for reasons recorded above I find no justifiable reason to invoke extra ordinary writ jurisdiction in this case and would dismiss the petition in *limine* as not calling for notice to be put to the opposite side without the petitioner demonstrating *prima facie* an arguable case for admission by calling for the records of the case. I find no necessity to make a fishing enquiry to find a case for her.

The petition is dismissed in *limine*.

06.12.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>