

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**WRIT PETITION NO.5384/2016**

Sanjay S/o Chintamanrao Mande

..Vs..

Spandan Heart Institute & Research Center, Nagpur

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri S.E. Raghorte, Adv. for the petitioner.  
Shri R.B. Puranik, Adv. for the respondent.

**CORAM : S.C. GUPTE, J.**

**DATE : 18.9.2017.**

1. Heard learned counsel for the parties.
2. The petition challenges an award passed by the Labour Court on a reference made to it under Section 10 of the Industrial Disputes Act. The subject matter of reference was termination of services of the petitioner herein. The petitioner was working as an Attendant in the respondent hospital. The respondent hospital caters exclusively to heart patients. The petitioner, who was employed with the respondent hospital in February, 2010, was terminated in September, 2012 on the ground of misconduct. The charge against the petitioner was that whilst working as an Attendant in the hospital, the Resident Medical Officer required services of the petitioner for bringing of urine pot for a patient. Despite looking for him, the petitioner was not found in the ward. The doctor was informed that the petitioner was in a room. When he was called from the room, he did not

attend the patient despite repeated requests. Not only did the petitioner come late for the duty call but started arguing with the resident doctor in a loud and arrogant manner. A commotion was created in the ward due to the petitioner's behaviour and as a result relatives of all patients gathered near the nursing station and finally at the persuasion of these relatives the petitioner calmed down. The enquiry into the misconduct was conducted before the Court where the resident doctor stepped into the witness box and deposed to the incident by filing an affidavit of evidence in lieu of examination-in-chief and subjecting him to further examination-in-chief and cross-examination by the petitioner's advocate. The incident has been narrated in necessary details by the resident doctor. The incident is also corroborated by the complaint filed by the resident doctor to the hospital administration, which is also deposed to by the doctor.

3. The only two aspects brought out in the cross-examination of the doctor by the petitioner's advocate are - (i) the resident doctor had not brought with him anything to show that he was employed with the hospital and (ii) There was no endorsement of receipt of the complaint (Exh. No.35) by the General Manager of the hospital, to whom the complaint was submitted by the resident doctor. The Labour Court in its impugned order held that the misconduct complained of by the respondent hospital was made out at the trial. The Court held that the petitioner had admitted in his

cross-examination that the resident doctor who deposed on the part of the hospital actually worked in the hospital. As far as non-endorsement of receipt on the complaint is concerned, the Court held that even though there was no endorsement of receipt of the complaint by the General Manager, there was no doubt regarding the fact that such complaint was made. The Court held that this was an internal matter of the hospital and the complaint was not made by the outsider but by the resident doctor himself. As far as the complaint itself is concerned the only suggestion made to the resident doctor in cross-examination was that the complaint was false. The suggestion was denied by the doctor. As far as the petitioner's own evidence is concerned there is a bald statement that he never committed any misconduct in the hospital. He has not referred to the alleged incident or explained it otherwise. On these facts, if the Labour Court accepted the testimony of the doctor and held that the petitioner was guilty of the misconduct complained, no fault can be found with such conclusion within the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution. The Court has not only found the petitioner guilty of misconduct but also went into the aspect of propriety of the punishment. The Court particularly considered that the respondent hospital being a hospital specially and exclusively treating heart patients, the Ward-boy making a commotion in the very ward of heart patients by insubordination to the resident doctor is a serious

misconduct for which the punitive action of termination is justified. I find nothing wrong in the impugned order. There is no merit in the petition. The petition is **dismissed**. No order as to costs.

JUDGE

*Tambaskar.*