

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.3794 of 2000

ORDER :

Petitioner has filed this writ petition assailing proceedings dated 27.11.1999 of the first respondent reverting her from the post of Senior Staff Nurse to the post of Staff Nurse and the consequent order dated 29.02.2000 of the first respondent dismissing her appeal against the said order.

2. A charge memo was issued to the petitioner on 02.11.1990 by the first respondent stating that on 26.10.1990 at about 1.30 p.m. she went to the In-Charge Chief Medical Officer, Sri M.V. Kodanda Ramiah, seeking permission to leave the hospital of the first respondent at 3.30 p.m; she was granted such permission and she also got a prescription of medicines for her husband; but when the Chief Medical Officer was prescribing medicines, it is alleged that petitioner suddenly hit him with case sheet board causing a bleeding injury on the nose.

3. Petitioner gave an explanation on 27.11.1990 denying the said charge and stating that the In-Charge Chief Medical Officer tried to outrage her modesty and attempted to molest her in his Chamber at about 1.15 p.m. on that day and in these circumstances, in the process of self-defence and to escape, she threw the case sheet pad on him and ran away from the Chamber. She stated that she approached Harbour

police station and lodged an FIR against him for molesting her. She contended that she belongs to the weaker sections and to a non-official cadre and since the Chief Medical Officer was a powerful and influential person, different yardstick was applied to him and to her and that he was being victimized, while he was set scot-free.

4. It is not in dispute that FIR.No.116 of 1990 was registered against the Chief Medical Officer by the Harbour Police Station and later a charge sheet was also filed in C.C.No.1 of 1992.

5. A counter-complaint was filed by the Chief Medical Officer against the petitioner alleging that the petitioner committed an offence punishable under Section 332 IPC for causing a bleeding injury to him with an aluminum case sheet on that day.

6. On 09.12.1994 by a common judgment C.C.No.1 of 1992 filed by the petitioner against the Chief Medical Officer was dismissed but the petitioner was convicted in C.C.No.188 of 1993 filed by the Chief Medical Officer against her.

7. Petitioner questioned the same in Criminal Appeal No.120 of 1994 before I – Additional Metropolitan Sessions Judge, Visakhapatnam in CrI.A.No.120 of 1994.

8. The said appeal was allowed on 16.07.1997 on the ground that the metal case sheet and the overcoat allegedly stained with blood were not produced before the criminal Court by the police; that the Chief Medical Officer did not give the real version before the Court

and tried to implicate the petitioner in a false case because she gave a prior complaint against him; that the prosecution did not examine two crucial witnesses to whom the Chief Medical Officer claimed to have informed the incident immediately; that in view of the defence taken by the petitioner that the Chief Medical Officer molested her, the incident in question cannot be said to have taken place as spoken to by the Chief Medical Officer; and that he suppressed real facts and gave a distorted version before the Court. It also held that his evidence was not corroborated by any witness and therefore it cannot be accepted.

9. It is not in dispute that CrI.R.C.No.963 of 1997 was also filed by the State against the acquittal of the petitioner in CrI.A.No.120 of 1994, but the said Criminal Revision Case was dismissed on 18.08.1999.

10. Subsequently, after the petitioner was acquitted in CrI.A.No.120 of 1994, enquiry was commenced on the basis of a charge memo dated 02.11.1990 issued to her as mentioned above.

11. Before the enquiry officer, the management examined some witnesses, but the petitioner though permitted to engage the services of a clerk by name Ch. Sanyasi Rao to defend her in the enquiry could not lead evidence, since the said person later backed out and the petitioner was denied permission to get a co-employee or a lawyer.

12. The enquiry officer gave a report on 12.05.1999 holding the petitioner guilty of the charge that she caused a bleeding injury to the Chief Medical Officer on his nose.

13. In his report he took the view that petitioner's attempt to get a lawyer or a co-employee to defend her case in the enquiry and her attempt to approach this Court was an attempt by her to adopt dilatory tactics. He then came to the conclusion that the Chief Medical Officer sustained a bleeding injury on his nose and such injury could have been caused with any sharp edged object; that the petitioner was carrying a metal case board, according to the evidence available, when she went to meet the Chief Medical Officer on that day; and there was no evidence to show that there was any provocation on the part of the Chief Medical Officer. He concluded that the petitioner bore a grudge against him on the ground that he had given a preliminary examination report in another case adverse to her; that she waited from morning till 1.20 p.m. to catch hold of him when he was alone; and, she had pre-planned to hurt him. He held that if she simply wanted permission to leave early on that day, she could have made the said request at an earlier point of time in the morning.

14. Copy of this enquiry report was furnished to the petitioner, and she submitted her response to the same on 26.06.1999. She denied that she had any prejudice against the Chief Medical Officer, and alleged that the Chief Medical Officer attempted to molest her and in self-defence she threw the metal case sheet holder on him and ran

away from his chamber and lodged a complaint against the Chief Medical Officer. She also referred to the criminal cases and her acquittal in Criminal Appeal No.120 of 1994. She explained why she sought time in the disciplinary proceeding and pointed out that when the criminal case is pending, disciplinary enquiry is normally not proceeded with, and it is not proper to state that she delayed the enquiry. She also stated that none of the witness examined in the enquiry were eye-witnesses to what actually happened in the closed room of the Chief Medical Officer and that therefore she should be exonerated and the Chief Medical Officer ought to have been punished.

15. However, the disciplinary authority, i.e., the Chairman of the Dock Labour Board agreed with the conclusions of the enquiry officer and imposed punishment of reversion of the petitioner to the post of Staff Nurse from the post of Senior Staff Nurse with effect from 26.11.1999 vide order dt.27.11.1999. The petitioner preferred an appeal on 05.12.1999 against this order to the Visakhapatnam Dock Labour Board. It rejected the said Appeal in its meeting held on 28.02.2000.

16. Assailing the same, the present Writ Petition is filed.

17. The counsel for petitioner contended that in the absence of any direct evidence of the petitioner causing the bleeding injury to the Chief Medical Officer and having regard to the petitioner's acquittal

in the Criminal Court, and the defence of the petitioner that the Chief Medical Officer tried to outrage her modesty and attempted to molest her, the enquiry officer, the disciplinary authority and the appellate authority ought not to have found her guilty of the misconduct and imposed the punishment of reversion on her. It is contended that the petitioner was a victim of sexual harassment by the said Chief Medical Officer and since the criminal court had thrown out the case initiated by the said Chief Medical Officer against the petitioner under Section 322 of the I.P.C. for causing him bleeding injury, and given a finding that he suppressed real facts and given a distorted version, the same ought to have been accepted and the petitioner exonerated.

18. Sri V.N. Ramachandra, learned Counsel representing Ms. V. Uma Devi, counsel for respondent, however, refuted the above contentions and supported the orders passed by the disciplinary authority as well as the appellate authority. He contended that petitioner has admitted that she threw the metal case sheet holder on the Chief Medical Officer; that therefore the enquiry officer rightly came to the conclusion that she caused the bleeding injury to the Chief Medical Officer on the basis of the evidence examined in the enquiry; that the findings of the criminal court have no bearing in the disciplinary proceedings and that having regard to the gravity of misconduct, the punishment imposed was appropriate. He contended that the petitioner did not participate in the enquiry proceedings and delayed them even though one Sri Ch. Sanyasi Rao was permitted to

represent her in the enquiry and that the defence of the petitioner that the Chief Medical Officer tried to outrage her modesty was not established at all in the Criminal Court or in the disciplinary proceedings.

19. I have noted the contentions of both sides.

20. It is true that the charge-memo dt.02.11.1990 was issued to the petitioner for which the petitioner submitted an explanation on 27.11.1990 itself. The enquiry proceedings, according to the enquiry officer's report, commenced on 29.09.1997 and concluded on 12.05.1999. This delay in the enquiry proceedings occurred because of the criminal case in C.C.No.1 of 1992 filed by the petitioner against the Chief Medical Officer and C.C.No.188 of 1993 initiated against the petitioner by the Chief Medical Officer.

21. In view of the settled legal position that when criminal prosecution on the same facts is pending before a Criminal Court, disciplinary proceedings ought not to be applied, the petitioner cannot be blamed for the delay in conduct of enquiry between 1990 and 1997.

22. Since the petitioner has a right to defend herself in the enquiry she is entitled to take the assistance of an employee. However, though one Sri Ch. Sanyasi Rao was allowed to assist her in the enquiry he subsequently backed out on 19.03.1998 and the petitioner's request to take the assistance of Visakhapatnam Port Trust employee or an

Advocate was rejected. The attempts of the petitioner to engage a representative on her own behalf to defend her in the enquiry cannot be termed as a dilatory tactics as was done by the enquiry officer.

23. Now coming to the enquiry report, the enquiry officer came to the conclusion that the in-charge Chief Medical Officer sustained a bleeding injury on his nose and such injury could be caused with any sharpened-edged object, and that since the petitioner was carrying a metal case sheet holder when she went into the Office of the in-charge Chief Medical Officer on 26.10.1990, she ought to be held responsible for the said injury.

24. The fact remains that neither the metal case sheet holder, allegedly used by the petitioner nor the over-coat, on which allegedly blood stains were found, was marked in the disciplinary enquiry. In fact, they were not even produced in the Criminal Court.

25. The petitioner had only admitted that she had thrown the metal case sheet holder on the Chief Medical Officer in a bid to defend herself when he was trying to molest her at that point of time. She did not admit that the metal case sheet holder hit him and caused bleeding injury as alleged. So it was her word against his word. Admittedly, the incident in question took place within the closed confines of the office of the in-charge Chief Medical Officer and there was no third-party there. All the witnesses examined in the enquiry deposed that they came to know about the injury after the incident. None of them

stated that they had witnessed the incident. The complainant himself stated that he went to the Deputy Chief Medical Officer immediately after suffering the bleeding injury, but the said person was not examined as witness. Merely because the petitioner was seen to be walking towards the office of the in-charge Chief Medical Officer with a metal case sheet holder it cannot be presumed that she caused injury to him. The alleged motive, which is referred to by the enquiry officer, also cannot be accepted since the incident in respect of which the petitioner was suspended earlier in relation to her diagnosis as pregnant regarding a daughter of a Dock Labour Board employee occurred on 18.08.1990 and though the petitioner was suspended on 24.09.1990, admittedly, the said suspension itself was revoked by 05.10.1990.

26. The incident in question took place on 26.10.1990, after the said event and even the charge-memo issued against her was dropped on 11.06.1992 in regard to the said incident.

27. It is true that petitioner's defence that the in-charge Chief Medical Officer tried to molest her is also not established either in the Criminal Court or in the disciplinary enquiry. According to the petitioner, the said incident is a provocation to her to throw the metal case sheet folder on the in-charge Chief Medical Officer. Since both the incidents, i.e., the alleged molestation claimed by the petitioner as well as the causing of injury to the in-charge Chief Medical Officer took place within the closed confines of a room where there were no

eye-witnesses and since there is no evidence to show that the said metal case sheet holder actually hit the in-charge Chief Medical Officer and caused injury to him, I am of the opinion that on the basis of conjectures and surmises and mere suspension, the Enquiry Officer found the petitioner guilty of the charge.

28. Though counsel for respondent sought to sustain the enquiry officer's findings by contending that petitioner admitted that she caused the injury, there is no such admission by the petitioner though she did say that she threw the metal case sheet holder on the Chief Medical Officer when he tried to molest her.

29. Therefore, I am of the opinion that the enquiry officer appears to be prejudiced against the petitioner and his report is not based on evidence and requires to be discarded. Consequently, the disciplinary authority's order dt.27.11.1990 which agreed with the enquiry officer's report and the decision dt.28.08.1990 of the 1st respondent's Board rejecting petitioner's appeal, cannot be sustained.

30. Therefore, the Writ Petition is allowed and the proceedings dt.27.11.1999 of the Chairman of the 1st respondent as well as the proceedings dt.29.02.2000 of the Visakhapatnam Dock Labour Board, the Appellate Authority, are set aside; and it is directed that the petitioner be treated as holding the post of Senior Staff Nurse from 26.11.1999 and that she shall be entitled to all attendant and consequential benefits.

31. Accordingly, the Writ Petition is allowed as above. No order as to costs.

32. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-08-2017

Knvi/Ndr/*

