

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) Nos.3769 AND 6222 OF 2017

AND

WRIT PETITION No.40197 OF 2016

Dated:12.07.2017

W.P. (TR).No.3769 of 2017

Between:

Dr. P. Viswashanthi, D/o. P. Viswanadham,
Aged 45 years, Occ: Civil Surgeon Specialist
and Medical Superintendent, Community
Health Centre, Huzurabad Mandal
Headquarters, Karimnagar District

.. Petitioner

And

The State of Telangana, rep., by its
Principal Secretary to Government,
Health Medical & Family Welfare
(B1) Department, Secretariat,
Hyderabad and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO
WRIT PETITION (TR) Nos.3769 AND 6222 OF 2017
AND
WRIT PETITION No.40197 OF 2016

COMMON ORDER:

Petitioner was initially appointed as Civil Assistant Surgeon and later promoted as Civil Surgeon Specialist in the year 2003. She was posted as Civil Surgeon (General Surgery and Medical Superintendent) in Government Civil Hospital, Huzurabad. While working in the said post, by Government Order in G.O.Rt.No.371, dated 05.06.2015, she was transferred to Area Hospital, Godavarikhani, Karimnagar District. Challenging the said transfer order, petitioner filed O.A.No.2846 of 2015. By order dated 19.06.2015, the Tribunal stayed the order of transfer and further directed to continue the applicant in Huzurabad. According to the petitioner, consequent to the interim order passed by the Tribunal, she was continued. While so, by order dated 17.06.2016 she was placed under suspension on certain allegations. Aggrieved by the order of suspension, petitioner filed O.A.No.3089 of 2016 (W.P.(TR).No.6222 of 2017). Alleging that subsistence allowance was not paid for a long period and her salary was also not paid from 19.06.2015 to 16.06.2016, she filed W.P.No.40197 of 2016. After institution of the said Writ Petition, the substance allowance is paid.

2. From the narration of the above facts, it is clear that cause in W.P.(TR).No.3769 of 2017 does not survive, as a consequence to her suspension from service on 17.06.2016.

3. However, as seen from the facts of the case in W.P.(TR).No.6222 of 2017, petitioner applied for leave from 10.09.2015 to 25.02.2016. According to learned counsel for the petitioner, so far leave is not sanctioned and on account of not sanctioning the leave, salary and allowances are not paid, causing hardship to her.

4. The Medical Superintendent has issued attendance certificate, which would disclose attendance of the petitioner prior to proceeding on leave and reporting back to duty after completion of leave period.

5. Taking note of these facts, W.P.(TR).No.3769 of 2017 is disposed of with a direction to competent authority that the leave application submitted by the petitioner shall be considered and appropriate decision as warranted in law be taken as expeditiously as possible preferably within a period of four weeks from the date of receipt of a copy of this order.

6. Similarly, cause in W.P.No.40197 of 2016 does not survive, in view of the payment of subsistence allowance during the period of suspension. Therefore, the Writ Petition is disposed of. However, the respondents are directed to continue to pay subsistence allowance until the petitioner continues under suspension or till the disciplinary proceedings are concluded, whichever is earlier.

7. Learned counsel for the petitioner submits that charge memo dated 02.11.2016 was served on the petitioner and the petitioner submitted detailed explanation on 05.12.2016. Not satisfied with

the explanation filed by the petitioner, on 17.03.2017 enquiry officer was appointed to conduct enquiry. According to learned counsel for the petitioner, there is no further progress in the enquiry. He therefore submits that the order of suspension is liable to be set aside, since there is no progress in the enquiry and without justification and only to harass and humiliate the petitioner she was placed under suspension and continued under suspension.

8. The order of suspension shows that the petitioner disobeyed the order of higher authority. The order does not specify the reasons as to why such disobedience is observed. It is not in dispute that the Government is competent to place the petitioner under suspension and it cannot be said that, from the reading of the order, it is passed with an oblique motive as sought to be contended. Furthermore, charges are now communicated to the petitioner and a bare look at the charge memo shows that the allegations made against the petitioner, if proved, are grave.

9. Therefore, at this stage, this Court is not inclined to interfere with the order of suspension. However, since the petitioner already filed explanation and enquiry officer was already appointed, having regard to the Government policy to complete the disciplinary proceedings it is necessary and expedient to complete disciplinary proceedings within a time frame.

10. In **Prem Nath Bali v. Registrar, High Court of Delhi and another**¹, Supreme Court held as under:

¹ (2015) 16 SCC 415

“28. Keeping these factors in mind, we are of the considered opinion that **every employer (whether State of private) must make sincere endeavour to conclude the departmental enquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time-frame then efforts should be made to conclude within the reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.**”

(emphasis supplied)

11. Having regard to facts of this case, the respondent Government is directed to complete the disciplinary enquiry and the disciplinary action as expeditiously as possible, preferably within a period of six months from the date of receipt of copy of the order by following due procedure and after giving due opportunity to the petitioner. If, for any reason, which is not attributable to the petitioner, the enquiry cannot be completed within the time granted, the respondent Government shall review the desirability of further continuation of the suspension, duly taking note of the fact that the petitioner is under suspension for more than one year and since more than one year there is no progress in enquiry. The respondent Government shall also consider the desirability of enhancement of the subsistence allowance, if not already enhanced. It is made clear that all the issues are left open. It is open to the petitioner to raise all contentions as available in law during the course of enquiry and before the disciplinary authority and all her contentions are preserved.

12. W.P.(TR).No.6222 of 2017 is accordingly disposed of. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in the Writ Petitions (TR) shall stand closed.

P. NAVEEN RAO, J

Date:12.07.2017

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