

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.17657 of 1997

Date of Decision:11.05.2017

Dr. Sunir Kumar Sharma

... Petitioner

Vs.

The State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Jagdish Manchanda, Advocate for the petitioner.

Mr. Ravi Partap, A.A.G. Haryana.

Mr. C.B. Goel, Advocate for respondent No.3.

P.B. BAJANTHRI J. (Oral)

In the instant petition, the petitioner has questioned the validity of order dated 28.6.1997 (Annexure P-15) terminating/dispensing his services.

The petitioner was appointed as a whole time Medical Officer on probation w.e.f. 25.10.1979. The order of appointment stipulates that he is on probation for a period of six months. The competent authority has to confirm the petitioner's services. In other words, probation period is to be declared as satisfactory. Whereas competent authority not complied the above condition, at the same, petitioner was continued from 25.10.1979 to 28.6.1997 and his services were dispensed on 28.6.1997.

Learned counsel for the petitioner submitted that the petitioner was appointed on regular basis and he has rendered 18 years of services. He being a Medical officer, order of appointment prohibits him for private practice. There are 2000 employees in the sugar mill. Therefore, as per Section 70 (i) of Punjab Factory Rules 1952, the respondent-sugar mill were required to maintain certain infrastructure in respect of health care of

employees to the extent of dispensary and other related medical facilities. Therefore, petitioner's services were continued from 1979 to 1997. After rendering 18 years of service, abruptly the petitioner's services have been dispensed without even issuing notice to him. Therefore, order of termination is liable to be set aside.

Per contra learned counsel for the respondent-Sugar Mill submitted that the petitioner's probation has not been declared as satisfactory. Therefore, he continued to be on probation and in the order of appointment, it is stated that petitioner's services can be dispensed without giving notice. It was further submitted that the petitioner was working with reference to a particular distillery unit and that distillery unit was closed. Consequently, the petitioner's services were not required in the distillery unit. Therefore, there is no infirmity in dispensing the petitioner's services. It was also submitted that sugar mills have taken a decision that instead of appointing whole time medical officer, to appoint part time Medical Officer. Thus, they proceeded to appoint one Dr. Madhusudan Gupta as Medical Officer on part time basis. The petitioner has not questioned the validity of order of appointment given to Dr. Madhusudan Gupta. Therefore, petition is liable to be rejected.

Learned counsel for the respondent-Mill submitted that the petitioner and others have approached this Court on an early occasion questioning the validity of resolution passed by Sugar Mills, the same was disposed of with an observation that as and when petitioners' right are affected, they were directed to approach.

Heard learned counsel for the parties.

Perusal of order of appointment dated 25.10.1979, it is evident

that the petitioner was appointed initially for a period of six months and it is stated that “during probation period services are liable to be dispensed without any notice and it was also stated that after successful completion of probation period, you will have to serve the mills at least for a period of three years etc.” It was bounden duty of the respondent-Mills to discharge the petitioner's services if the petitioner's services were not satisfactory as and when period of six months completes from the date of appointment. On the other hand, the respondent-Mill proceeded to continue the petitioner's services till 28.6.1997. The petitioner has rendered 18 years of service. Therefore, he is entitled to notice before dispensing his services or he should have been granted some monetary benefits.

Learned counsel for the respondent-Mill contended that because of closure of distillery unit where the petitioner was working, impugned action has been taken. Perusal of termination order do not disclose that distillery unit was closed etc. Moreover, the petitioner has not been appointed to the distillery unit or the Sugar Mill. On the other hand, he was appointed to the Panipat Co-operative Sugar Mills. Therefore, the petitioner had lien in the Panipat Co-operative Sugar Mills Limited, even though, the petitioner was asked to discharge the duties of the post in the distillery unit. Mere appointment of part time Medical Officer subsequent to dispensing the petitioner's services that does not mean that the petitioner is required to challenge the appointment of Medical Officer on part time. If the petitioner is successful in writ petition i.e. dispensing from service order is set aside, he is entitled for consequential benefits. Therefore, he need not challenge the subsequent appointee's appointment order. That apart the petitioner's service condition is affected by virtue of order dated 28.6.1997

(Annexure P-15). Fact that the petitioner was appointed as a Medical officer on whole time basis by imposing certain conditions like he should not set up his private practice, abruptly dispensing his services after 18 years would be heart burning for the reasons that the petitioner being a Medical Officer, now he cannot set up a private practice after rendering 18 years of service in the respondent-Sugar Mill.

The present case is nothing to do with CWP No.1069 of 1996 for the reasons that in the earlier case, the petitioner and others have questioned the validity of resolution. Whereas in the present case, order of termination is under challenge. Therefore, there will not be any effect with reference to the earlier decision on the present petition.

In view of these facts and circumstances, order dated 28.6.1997 (Annexure P-15) is set aside. The respondents are directed to extend monetary benefits to the petitioner during the intervening period from the date of dispensing his services till his date of retirement. Further if the petitioner is entitled for any other benefits in accordance with law for having served the respondents, the same shall be disbursed to him. The above exercise shall be completed by the respondents within a period of four months from the date of receipt of a certified copy this order.

Petition stands allowed accordingly.

11.05.2017
rajeev

(P.B. Bajanthri)
Judge