

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.1350 of 2017

Date of Decision: 27.01.2017

Vaneeta Harrison, Staff Nurse

...Petitioner

VERSUS

Union of India & others

....Respondents

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr. Ankit Aggarwal, Advocate for the petitioner.

SUDIP AHLUWALIA, J.

The petitioner was working as a Staff Nurse in Government Medical College & Hospital, Sector 32, Chandigarh. Her marriage was solemnized on 26.12.2002. Six years later, her husband went to New Zealand and got permanent residency there. On 8.2.2010, she was granted three months' Ex-India Leave. She returned to India and re-joined her duties on 1.7.2010. However, there had been complications with her pregnancy and the Hospital duty and household work etc. took their physical and emotional toll on her. Her husband called her back to New Zealand for a short period as her Visa was going to expire on 26.9.2010. It is thus claimed that under these compelling circumstances, she was unable to inform her employers i.e. Respondent Nos.3 & 4 about her departure to New Zealand again. The Leave of the Kind Due granted to her from 30.8.2010 to 14.10.2010 was going on at the time of her departure. She further claims

that her application for extension of leave was rejected without her knowing about the same. She went to re-join her duties on 29.3.2011, but was served with the Memorandum dated 23.3.2011 (Annexure A-9) vide which, she was intimated that her unauthorized absence and departure from India amounted to misconduct for which she would have to face the Departmental Proceedings. The Article of Charges to that effect was annexed to the Memorandum.

2) In the inquiry conducted subsequently, after perusing the reply of petitioner and the medical evidence, the charges levelled against her were proved, although the H.O.D.-cum-Inquiry Officer recommended imposition of some minor penalty for her misconduct. She submitted her representation thereafter to the Director-cum-Principal/Respondent No.3, who rejected her prayer for taking a lenient view by observing inter-alia -

“AND WHEREAS, on going through the facts and circumstances of the case as well as the inquiry report submitted by the Inquiry Officer, the undersigned is of the considered opinion that by remaining willfully absent from duty, S/N Mrs. Vaneeta Harrison committed gross misconduct and is not fit to be retained in the government service and a penalty of removal from service is proportionate to the offence committed by her.

NOW THEREFORE, the undersigned being disciplinary authority, while agreeing with inquiry report, hereby impose the major penalty of removal from service which shall not be a disqualification for future employment under the Govt., as provided under rule 5(VIII) of Punjab Civil Services (Punishment and Appeal) Rules 1970 upon S/N Ms. Vaneeta Harrison, (118) W/o Sh. Ajay Harrison, E. code-2052 with immediate effect. Her period of absence w.e.f. 15.10.10 to 24.04.2011 has been treated as “dies non”.

3) She preferred appeal against the aforesaid Order of Respondent No.3, which was in turn rejected by the Home Secretary-cum-Secretary

Health, Chandigarh Administration vide the detailed Order (Annexure A-21) passed by him on 15.4.2014. She thereafter challenged her removal from service by approaching the Central Administrative Tribunal. But her Original Application in this regard was dismissed by the Ld. Tribunal with the observations -

“In the light of above authoritative law, this O.A. deserves to be dismissed. Applicant was not only absent from duty, she also concealed this fact from the respondents that she visited New Zealand while she was on earned leave. Therefore, we are of the considered view that the punishment of removal from service was inflicted by the Disciplinary Authority after considering gravity of charge and it cannot be interfered with. Accordingly, the O.A. being devoid of merits is dismissed. No costs.”

4) We find no reason to interfere with the decisions of the Respondents/Authorities regarding removal of the petitioner from service. Nursing duty in a Hospital by its inherent nature constitutes an emergency service. In the given circumstances, her unauthorized absence therefrom for months together and departure from India without even intimating her employer certainly would appear to be gravest of misconduct.

5) It is even more appalling to note that the legal proceedings preferred on behalf of petitioner after her removal from service have been filed on her behalf while she still is residing abroad. She did not annex any copy of her Original Application filed in the Central Administrative Tribunal, but from the Heading of the Impugned Order dated 14.10.2016 (Annexure P-4) passed by the Tribunal, it becomes clear that she was residing in Canada at the time of filing the application, which was filed by her father and Special Power of Attorney Holder Mr. Mubarak Masih. The present Writ Petition has also been similarly filed through her father/Special

Attorney which clearly goes to show that her challenge to the penalty by way of removal from service is basically in the nature of luxury litigation, although her real interest and disposition lies in residing abroad. In any case, there is absolutely no impropriety or irregularity in the manner of conducting the disciplinary proceedings by the Inquiry Officer, nor there was any denial of the principles of natural justice in any form. The punishment imposed by the Disciplinary Authority is also not exorbitant or disproportionate considering the nature of misconduct proved against her. We therefore, find no reason to take a different view from that of the Respondents in terminating the petitioner's service. The Writ Petition is therefore, dismissed.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

27.01.2017
AS

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***