

\$~5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6158/2012

RAKESH KUMAR

..... Petitioner

Through: Mr. Yashpal Rangi, Adv.

versus

M.C.D. AND ANR

..... Respondents

Through: Mr. Balendu Shekhar and Mr. Vivek
Jaiswal, Advs.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **16.01.2017**

CM No.3951/2015 & 3952/2015

The delay in seeking the restoration is condoned and the writ petition is restored to its original number.

W.P.(C) 6158/2012

1. The petitioner has challenged the award of the Labour Court whereby the petitioner's claim for reinstatement has been dismissed.
2. The petitioner was working as a daily wager with Swami Dayanand Hospital under the Municipal Corporation of Delhi. On 28th December, 2006, a complaint was made by a patient namely Omwati alleging that the petitioner and his colleagues have raped the patient whereupon FIR No.12/2007 under Sections 376/342/354/506/34 IPC was registered with PS Dilshad Garden. The preliminary inquiry was conducted by a Committee comprising of five members namely Dr. Sunita, Ms. Nandan, Ms. Sadhana, Mr. R.K. Saxena and Mr. N.P. Singh who submitted their report on the basis of which the services of the petitioner were terminated w.e.f. 06th January, 2007.

3. Learned counsel for the petitioner urged at the time of hearing that the petitioner has been acquitted by the Sessions Court and he has not been afforded an opportunity to defend before the inquiry. It is further submitted that the petitioner was a regular daily wager.

4. Learned counsel for the respondent submits that the petitioner was found guilty in the preliminary inquiry conducting by the senior members. It is further submitted that since the petitioner was a temporary daily wager, the preliminary inquiry conducted by the management was sufficient to take a decision as to whether his services be continued or not. The report of the preliminary inquiry committee has been placed on record along with the counter affidavit. The relevant portion of the said report is reproduced hereunder:-

“This is to inform you that all of us are the Committee members. Directive letter, dairy No.3456, dated 5-01-2007.

1) Mr. Sunil Fotedar

2) Ms. Nandan

3) Ms. Sadhana

4) Mr. R.K. Saxena

5) Mr. N.P. Singh

The above people had inquired the patient and everybody whosoever is connected with the case. On inquiry with the aforementioned patient, it was discovered that, on 27-12-2006 at 3:32 p.m. she was admitted to the hospital. She had come to that place for the operation of her womb. The operation was fixed on 29-12-2006, which is supposed to be our operation day. Before the operation, Dr. Sharad, who is an anaesthetist, examined the patient generally. He prescribed a check up by a physician. Dr. Rajesh came to the ward and examined the patient and wrote his treatment. Dr. Lal who is also an anaesthetist, came to the ward at night and examined the patient on 28-12-2006. The patient has given a statement that, before this medical examination happened, a cleaning Staff called Ram Singh came and 6 o'clock in the evening and took her to the operation theatre stating that her operation is to take place there. The patient went to the O.T. with her mother-in-law. Ram Singh handed

them over to the ward boy Rishi, telling him that he has brought this patient and that he must get all her medications done properly. Thereafter, he left that place. Rishi told the patient to get inside, and he went outside with her mother-in-law, and kept her engaged in a talk. The patient said that, two persons who were inside the room made her lie on the bed and said that she will be operated tomorrow and that they will examine her properly. During this time, Assistant Sanjiv and ward boy Rakesh, were present inside the O.T. Only these two were present there and they are the ones who shut the door and raped her. Ward Sister Rajji, who was on-duty, has said that between 6 o'clock to 9 o'clock in the evening, she neither saw the cleaning staff, Ram Singh nor did she have any notice about the patient being in a normal condition. The patient did not give any information to Dr. Sunil Fotedar during his personal examination. Instead, she only said that two of the hospital Staffs molested her. The hospital Authority got to know about this incidence on the evening of 4th January, when Dr. Fotedar, Sister Swarn Mehta and Sister Kamla Gil informed them. Only then, the M.S. formulated this committee so that the guilty staffs shall be identified and granted punishment according to law. Initial investigation which was conducted on 5th of January, 2007, the committee inquired about the circumstances and the present condition, from all the staffs present. During the inquiry the committee conducted special inquiry from the following staffs:

- 1) Dr. Lal (E.M.O. on duty for the Anaesthesia department)
- 2) Sri Om Prakash (O.T. Technical Assistant)
- 3) Ms. Rajji Lorean (ward-sister)
- 4) Ms. Swarn Mehta (M. sister)
- 5) Ms. Kamla Gil (M. sister)
- 6) Security Supervisor (Sri Manoj Kumar)
- 7) Sister Gita (In-charge I.C.U.)
- 8) Accused Staffs- Rakesh, Sanjeev, Rishi and Ram Singh (S.R.)
- 9) Dr. Sharad S.R. (Anaesthesia)
- 10) Dr. Rajesh S.R. (Med.)
- 11) From the aggrieved Patient's husband, Sri Kaalicharan, her mother-in-law and other relatives:-

In view of all the facts of the case, patient Omwati I.D. No.23435 ward No.4 suffered a mishap between 6 o'clock to 7 o'clock approximately when she was called to the

Operation Theatre on the pretext of a P.A.C. check up. It was known after an inquiry from the duty staff that Ms. Omwati, w/o Sri Kaalicharan ward no.4 as to when she went to the operation theatre. It was also discovered that Dr. Lal was on duty on that day in the emergency. Staff Nurse was on duty and during this time she was an L.R. It is an earnest request on behalf of all the members of the Committee to take strict actions against the accused, based on your decision.”

5. Since the petitioner was a daily wager, there is no infirmity in the termination of services of the petitioner who was involved in a heinous crime against the patient in the hospital.
6. The writ petition is dismissed.

J.R. MIDHA, J.

JANUARY 16, 2017
ak