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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10984/2016, CM No. 42978/2016**
ANIL KUMAR YADAV

..... Petitioner

Through: Mr. Pradeep Kumar, Adv.

versus

GOVERNMENT OF NCT DELHI & ANR

..... Respondent

Through: Mr. Sanjay Ghose, Adv. and
Mr. Rishabh Jetly, Adv. for GNCTD

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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09.10.2017

1. The present petition has been filed by the petitioner challenging the order dated March 08, 2014 whereby his services were terminated w.e.f. February 22, 2014 on the alleged ground of unauthorized absence for the period between February 22, 2014 to February 28, 2014 and w.e.f. from March 02, 2014 till the date of office order.
2. Some of the relevant facts as noted from the writ petition are, the petitioner was appointed as Staff Nurse on January 05, 2008 initially on contract basis for a period of 11 (eleven) months in respondent No.2 / hospital.
3. It is the submission of the learned counsel for the petitioner that the

appointment continued thereafter on ad-hoc basis. It is the case of the petitioner, on February 15, 2014 he applied for two days leave on February 16, 2014 and February 17, 2014 and for four days Earned Leave w.e.f. February 17, 2014 to February 21, 2014 with permission to leave the station for his native place. It is the case, that on the night of February 21, 2014, the petitioner fell ill and he was taken to Government Ayurvedic Hospital, District Alwar, Rajasthan for treatment as he was diagnosed with 'Jaundice' and was advised medical rest for 15 (Fifteen days). On February 22, 2014, the petitioner gave telephonic information about his illness to his colleague namely Sh. Hazari Yadav, Staff Nurse, for conveying the same to Sister in Charge (Medicine Ward). On March 08, 2014, the petitioner having been declared fit by the Medical Officer, Government Ayurvedic Hospital, Alwar and also a medical fitness certificate was issued to the petitioner he immediately thereafter, on March 09, 2014 (Sunday), went to the hospital to deposit the medical certificate / medical fitness certificate and as there was no one accept the joining report, he again visited the respondent No.2 / Hospital on March 10, 2014 and March 11, 2014 but the petitioner was not allowed to meet the Director of the Hospital. On March 12, 2014 he having no option sent the medical certificate / medical fitness certificate by post to

the Director of respondent No.2 / hospital. It is his case that he represented to various authorities under the Government of NCT, Delhi against the order of termination dated March 08, 2014.

4. Suffice to state, the petitioner had earlier approached the Central Administrative Tribunal which dismissed the petition on the ground of jurisdiction. The respondents have filed their counter-affidavit, wherein a stand has been taken that the petitioner was sanctioned two day leave w.e.f. February 16, 2014 and February 17, 2014 and four days leave w.e.f. February 17, 2014 alongwith out station permission. The petitioner was supposed to join on February 22, 2014. He instead of joining on February 22, 2014 communicated via telephone that he would not be reporting for duty till March 02, 2014. It is the respondents case, that the petitioner failed to report for duty till March 08, 2014, and was unauthorisedly absent since February 22, 2014 and in terms of the stipulation in the terms of appointment, the services of the petitioner were terminated w.e.f. February 22, 2014 vide order dated March 08, 2014.

5. Learned counsel for the petitioner reiterates the averments made in the writ petition, in as much as the petitioner informing his colleague about he being granted 15 (Fifteen days) bed rest till March 08, 2014, and

immediately thereafter, he having joined the duties, his absence cannot be treated as unauthorised absence. On the other hand, Mr. Sanjay Ghose learned counsel for the respondents dispute the fact that the petitioner has informed his colleague about the fact that he has been advised 15 (Fifteen days) bed rest. Mr. Sanjay Ghose, states as per the information available with the respondent No.2 / hospital the petitioner was to join March 03, 2014. As he had not joined on that date and in terms of the stipulation if any unauthorised absence is beyond 5 (Five days) the services of such person could be terminated. It is precisely invoking the said stipulation, the office order of March 08, 2014 has been issued.

6. Having heard the learned counsel for the parties, the only issue which needs to be decided, is whether the petitioner's absence w.e.f. February 22, 2014 or March 03, 2014 till March 08, 2014 could have been treated as unauthorised absence leading to his termination. The parties are at variance in their stand in as much as it is the case of the petitioner that he had informed his colleague Sh. Hazari Yadav about his illness and he having been advised 15 (Fifteen days) bed rest and would not join till March 08, 2014. This aspect being disputed by the respondents by stating that had not conveyed his absence to the competent authority, the authority who was to

sanction leave, which submission is answered by the learned counsel for the petitioner by stating he could only convey the same to his colleague for being conveyed to the Sister in Charge of the Ward where the petitioner was working at the relevant time. There is no dispute on the fact that the petitioner had submitted the medical certificate (through post) which he has filed in these proceedings. The same reveals the petitioner having been advised bed rest for a period of 15 (Fifteen days). If the certificate issued by the authority is accepted by the respondents then the absence of the petitioner is not unjustified. If it is otherwise, surely the respondents are within their rights to take action in terms of the appointment.

7. In view of variance in the stand of the parties it was required by the respondents to at least issue a show cause notice to the petitioner and seek his reply before taking the impugned decision. Since the same has not been done this Court is of the view that the impugned order dated March 08, 2014 is unsustainable and the same is liable to be set aside ordered accordingly. At the same time, the respondents shall be at liberty to issue a show cause notice to the petitioner for his alleged unauthorised absence for the period mentioned in the impugned office order dated March 08, 2014 and elicit reply from the petitioner within a fixed period and on receipt of such reply

take a decision whether the absence of the petitioner was unauthorised or not. Pending that the petitioner shall be entitled to reinstatement with 50% back wages. The aforesaid action shall be taken by the respondents within two months from the day of receipt of this order.

8. If the petitioner is still agreed by any order to be passed by the respondents he shall be at liberty to challenge the same in accordance with law.

The petition is disposed of. No costs.

CM No. 42978/2016

Dismissed as infructuous.

V. KAMESWAR RAO, J

OCTOBER 09, 2017/akv