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

\+ W.P.(C) 113/2017 & CM Nos.572-574/2017

Date of Decision : 9th January, 2017

GOVT. OF NCT OF DELHI & ANR ..... Petitioners

Through: Mr. Anuj Aggarwal, ASC

versus

NARAIN SINGH YADAV ..... Respondent

Through

WITH

\+ W.P.(C) 118/2017 & CM Nos.594-596/2017

GOVT. OF NCT OF DELHI & ANR ..... Petitioners

Through: Mr. Anuj Aggarwal, ASC

versus

DIMPLE ..... Respondent

Through

WITH

\+ W.P.(C) 123/2017 & CM Nos.608-610/2017

GOVT. OF NCT OF DELHI & ANR ..... Petitioners

Through: Mr. Anuj Aggarwal, ASC

versus

ISHA SHARMA ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

1. Having heard learned counsel for the petitioners, we are not inclined to interfere with the impugned order dated 16.05.2016 passed by

the Principal Bench of the Central Administrative Tribunal, New Delhi (Tribunal, for short) whereby OA No.665/2015- Isha Sharma Vs. State of NCT of Delhi and others, OA No.666/2015-Narain Singh Yadav Vs. State of NCT of Delhi & Others and OA No.675/2015- Dimple Vs. State of NCT of Delhi & Others have been allowed.

2. The respondents Isha Sharma and Dimple were appointed as contract staff nurses and Narain Singh Yadav as contract OT(Technician) in the Govind Ballabh Pant ('GBP') Hospital as per the terms and conditions stipulated in the letters of appointment.

3. Litigation regarding salary and emoluments payable to contractual employees, who were similarly placed, was decided in favour of the contractual employees vide different orders of the Tribunal. Emoluments payable as per the said directions had to be calculated and computed. The amount payable was not quantified. Pursuant to the aforesaid directions, the Pay & Accounts Office ('PAO') deposited/credited different amounts in the bank accounts of the contractual employees through ECS, on different dates between April and June, 2014.

4. It transpired that the amounts transferred/credited directly in the bank accounts of the respondents were in excess of the amounts which

should have been paid to them. The respondents claim, that they having learnt about excess payment, even before any show cause notice was issued, had refunded the excess payments with the Cashier of the hospital in October and November, 2014.

5. The Department of Health and Family Welfare, GNCTD stepped in. Diary entry dated 12.12.2014 states that there was misappropriation of funds, and records the possibility of the "handiwork of persons thoroughly conversant with the accounting and IT system prevalent in the department." Mismatch between the pay bills and corresponding outgoings from the salary head in the GBP Hospital was noticed. Earlier, the Committee, so appointed had submitted their preliminary and supplementary reports dated 17.11.2014 and 29.11.2014, respectively. The reports state that wrong payments, described as "misappropriation of funds" to the extent of Rs.21,86,784/-, were made. These amounts were paid to five employees, an ex-employee and another person, who was yet to be identified. Acts of overpayment or "misappropriation of funds" had occurred in the past 17 months. Salaries in excess of the amounts due had been paid, and there were also instances of wrong payments being made to non-employees. The Secretary, Health and Family Welfare, however,

observed that exact details and methods would be established after thorough inquiry, as standard operating procedure had not been followed and unauthorised persons had access to the payment system and security of data was not being maintained nor was data cleaning or authentication being done.

6. For the sake of convenience, we would like to reproduce paragraphs 8 and 9 of the diary entry dated 12.12.14 of the Secretary (H &FW), which was affirmed by the Director (Vigilance):-

> *"8. The preliminary report of the committee prima facie makes out of a case of misappropriation of significant amounts (Rs.21,86,784/-), through ECS transfer from Salary head of 11 pay bills of GB Pant Hospital to salary account of 5 employees of GB Pant Hospital and one ex-employee and one yet to be identified individual. The said illegal transfer of money to their bank accounts in the State Bank of Bikaner & Jaipur, Punjab National Bank, Syndicate Bank etcs. seems to have been effected by offline manipulation of the salary and arrear pay bills submitted to PAO-XV for ECS transfer to salary accounts of GB Pant Hospital employees. From preliminary evidence it would appear that the said misappropriation was occurring at least for the past 17 months, and the remittances made to the salary accounts of the officials in question are significantly in excess of the*

amounts due to them. Also, significant transfers have been made even to non-employees. Inputs from IT experts indicate that the entire modus operandi may be the handiwork of persons thoroughly conversant with the accounting and IT system prevalent in the Government. The exact details and methods would be established after a through inquiry, but it is evident that SOPs were not being followed, unauthorized persons had access to the payment system and security of data was not being maintained nor was data cleaning or authentication being done.

9. Although the point may be merely academic, the difference between these instances of misappropriation at GB Pant Hospital and those reported at the Lok Nayak Hospital earlier is that in the latter case the total amounts in the various bills, generated by DDO and those transacted by PAO are identical, but the recipient's names/account have been manipulated and amounts diverted to them; in the case of Lok Nayak Hospital the gross or total amounts were different. Further, against a reported embezzlement of Rs.11,89,936/- an actual recovery of Rs.21,86,786/- has already been effected by the hospital authorities. This misappropriation has been going on at least since June 2013."

7. The petitioners thereafter, without ascertaining the full facts and without issuing any show cause notice, vide letter of the Director

(GIPMER) Governemnt of NCT, Delhi dated 19.12.2014, terminated the services of the three respondents. The said letter perfunctorily records that the Secretary, Health & Family Welfare Department, Government of National Capital Territory of Delhi, had directed the termination of the respondents. Further, directions had been issued to register an FIR with the local police.

8. FIR No.116/2015 stands registered at PS:I.P. Estate, New Delhi, albeit an accepted and admitted position is that till date, no chargesheet has been filed and the matter is still pending investigation.

9. The Tribunal, in the impugned order, has recorded that the order of termination was punitive. It was certainly made on the assumption that the respondents were guilty and involved in misappropriation of funds. The presumption was raised as the respondents were the beneficiaries of excess amounts deposited in their bank accounts. However, the Tribunal observed that there was no evidence, or material facts, to affirm the said conclusion or finding. The Tribunal examined the factual matrix in detail and referring to the case law on the subject held that the termination order was unsustainable. Reference was made to several decisions of the Supreme Court, including ***Ratnesh Kumar Choudhary* v. *Indira Gandhi***

Institute of Medical Sciences, Patna, Bihar & Ors., JT 2015 (9) 363, to hold that if the termination order was stigmatic and based or founded on assumption of misconduct, it would be punitive in nature. The respondents have been condemned and held guilty, without ascertaining the complete facts and giving any opportunity to contest and rebut the adverse action of termination.

10. It is correct that excessive amounts were transferred to the bank accounts of the respondents by ESC transfer. However, the respondents' explanation, as noticed by the Tribunal in its order dated 16.05.2016 was:-

> "4. The case, set- up by the applicants, in brief, insofar as relevant, is that they have rendered excellent service to the Hospital and demonstrated high level of sincerity, honesty and integrity. The management of the Hospital was not paying salary to its employees regularly. It used to pay the salary to its employees after a period of 2 to 3 months. Applicants could not keep track of, how much money was credited into their accounts and thought that the Hospital was releasing arrears of salary and other benefits to the employees in pursuance of

> order dated 14.03.2013 in OAs No. 1878, 3088 and 3089 of 2012 and other connected OAs. It was explained that subsequently due to inadvertence, a large sum of money was credited in the accounts of many employees of the Hospital through Information Technology Electronic Clearing (ITEC) System. The applicants also received the amounts mentioned therein in their respective accounts genuinely believing it to be their arrears of salary and other benefits."

We have examined the explanation given. It cannot be said with complete certainty and conclusively that the explanation given is *per se* preposterous and risible, and that the respondents had colluded to ensure the overpayments. The respondents were not to receive a specified or fixed amount every month. The respondents claim that they never realised that excessive or overpayment was made. When they learnt, refund was made, even before issue of any notice.

11. In the present case, the petitioner had to compute the pay and arrears payable towards salary in terms of the decision of the Tribunal, and thereupon the amounts were to be credited to the bank accounts of employees. The computation was made by the Pay and Accounts Office.

When the allegations are serious as in the present case, caution and care must be exercised before the charge or allegation is held as established. In order to positively and affirmatively establish the involvement of the respondents, their explanations and justifications should have been asked. In the absence of any discussion and elaboration, the nexus between the PAO and the respondents would be premature and assumptive. We have referred to the stand and conduct of the respondents. A stigmatic order of this nature would stand by and confront the respondents throughout their life. The respondents have been declared as guilty of misappropriation, without even giving them an opportunity to contest/deny the said allegation.

12. The impugned order, passed by the Tribunal noticing the facts, has directed that only 50% of the backwages would be paid to the respondents. It should be noticed that it is not the case of the petitioners that they have discontinued the services of the similar contractual employees and that they do not require the service of the respondents.

13. The impugned order does not prohibit or restrict the petitioners from taking action in case they have evidence and material facts to establish involvement of the respondents. The action must comply with

the principles of natural justice.

14. With the aforesaid observations, we dismiss the present writ petitions. All the pending applications are also dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JANUARY 09, 2017
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