

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 903 of 2009**

Dr. Akhilesh Charan Dubey, S/o. Shri Ishwar Chand Dubey, Aged about 40 years, R/o. Sri Ram Hospital, Dangania Square, Mahadev Ghatt Road, Raipur, District Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through The Secretary, Public Health & Family Welfare Department, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. Director, Public Health Services, Govt. of Chhattisgarh, Raipur, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Varun Sharma, Advocate
For State	:	Mr. Syed Majid Ali, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****02/08/2018**

1. The relief sought for in the present writ petition is for quashment of the disciplinary proceedings initiated against the petitioner for unauthorized absence and also challenges the order of dies-non imposed vide the disciplinary action (Annexure P/1) dated 23.02.2008.
2. The brief facts of the case is that the petitioner was working as a medical officer at Primary Health Centre, Birkona, District Mahasamund and while working on the said post, the petitioner applied for a casual leave on 20.11.1996 and thereafter overstayed the casual leave and reported for duty after more than 7 months i.e. on 07.05.1997 and gave his joining, which was refused by the higher authorities in the department. Thereafter the petitioner again went into slumber and woke up on 01.02.2000, when he filed a representation and the petitioner thereafter again went into more deep slumber for another 5 years and

woke up on 10.01.2005 by moving an application asking the respondents to permit him to resign from his service, which was not accepted. Meanwhile the respondents had already initiated disciplinary proceedings against the petitioner by issuance of a show cause notice on 01.10.1999 for unauthorized absence of inordinate long period and a charge sheet was also served on 24.05.2000, but it appears that the said charge sheet could not be served upon the petitioner and subsequently another charge sheet was issued on 20.02.2006 and an inquiry officer was appointed and the inquiry officer submitted his report on 23.01.2008 based upon which the impugned order was passed on 27.02.2008, whereby the respondents have accepted the resignation of the petitioner w.e.f. 10.01.2005 and so far as the period of absence is concerned, the same has been ordered to be treated as “dies-non”.

3. The contention of the petitioner is that the impugned order so far as imposition of dies-non is concerned is bad in law for the reason that dies-non amounts to a major punishment and under the rules before issuance of a major punishment, it is incumbent upon the department to conduct a departmental enquiry. It was also the contention of the counsel for the petitioner that the finding of the inquiry officer as well as the disciplinary authority on the basis of which the period has been held to be dies-non is a perverse finding for the reason that the petitioner in fact for his absence had applied for earned leave whereas the respondents show it to have been an application for grant of casual leave. This aspect has not been considered by the respondents while passing the impugned order.
4. The counsel for the petitioner submits that since the letter of resignation was being accepted for the first time vide the impugned order dated

27.02.2008 the intervening period from the date of application for resignation till it was accepted should be treated as period spent on duty and the petitioner should have been suitable given the benefit for the said intervening period. The claim of the petitioner is also on the ground that during the entire period when the disciplinary proceedings were initiated, his services were not placed under suspension.

5. Perusal of the aforesaid factual matrix of the case, itself would show that beyond 20.11.1996 till the impugned order was passed i.e. on 27.02.2008 i.e. a period of almost about 12 years, not a single day the petitioner reported for duty for discharging his normal duties as a medical officer. From the date, which has been provided by the petitioner it also reveals that the petitioner also did not take any keen interest or steps for serving the respondents, by insisting on his joining, which he has alleged to have given on 07.05.1997. This conduct of the petitioner and the gap in between the correspondences which the petitioner has made with the respondents itself would show that the petitioner at no point of time was interested in discharging the duties of medical officer under the respondents. It appears that the petitioner was better engaged elsewhere during the said period.
6. From the record, it also reveals that the petitioner has not been able to show any justifiable reason for his unauthorized absence for these 12 long years from 1996 to 2008 and he has also not shown any steps that he has taken in between for extension of his leave, which he had applied in November, 1996 or has provided any documentary evidence to justify his absence. In the absence of any such evidence or prove on the part of the petitioner to justify the unauthorized absence, this Court does not find the action on the part of the respondents in treating the

said period as dies-non. "Dies-non", otherwise means that the period does not exist for all practical purposes under the service jurisprudence and it has to be treated as non-productive period.

7. The petitioner during the intervening period was totally non-productive so far as the respondents are concerned, in as much as there is no iota of proof or evidence on his part to justify the unauthorized absence. Neither has there any document to show that he had made efforts in insisting for grant of joining with the respondents. Under the circumstances, the impugned order does not warrant any interference.
8. This is a fit case where the present petition deserves to be dismissed with exemplary cost as it appears to be nothing but a luxurious litigation post the impugned order having passed, particularly when there is no justification whatsoever for the unauthorized absence for a period of more than 12 years.
9. However, since the respondents for reasons best known to them have themselves taken a lenient view by accepting his resignation after 12 years of unauthorized absence, this Court is not inclined to impose any cost upon the petitioner at this juncture.
10. The writ petition thus stands disposed off.

Sd/-
(P. Sam Koshy)
Judge