

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 1970 of 2019

Smt. Mamta Singh W/o Shri Bindeshwari Singh, Aged About 54 Years,
R/o Village Janakpur, Near Old Hospital, Post Janakpur, District Koriya
Chhattisgarh.

---Petitioner

Versus

1. State Of Chhattisgarh, Through Secretary, Department Of Health And Family Welfare, Mahanadi Bhawan, Mantralaya, New Raipur, Chhattisgarh.
2. Director (Nursing), Directorate Of Health And Family Welfare, Indrawati Bhawan, New Raipur, District Raipur, Chhattisgarh.
3. Collector, District Koriya, Chhattisgarh.
4. Zonal Joint Director Health Service, Surguja Zone, Ambikapur, District Surguja Chhattisgarh.
5. Chief Medical And Health Officer, District Koriya (Baikunthpur), Chhattisgarh.

---Respondents

For petitioner	:	Shri Pushkar Sinha, Advocate.
For State	:	Shri Anshuman Shrivastava, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/03/2019

1. The challenge in the instant Writ Petition is to the order of termination dated 28/11/2016.
2. The contention of the counsel for the petitioner is that, the order of termination was without conducting the departmental enquiry and reason for termination was the conviction of the petitioner in a criminal case whereby the petitioner was sentenced to undergo R.I. for 7 years for the offence

under Section 304 (2) of IPC and R.I. for 5 years for the offence under Section 314 of the IPC.

3. The ground raised for challenging the impugned order of termination is that, the criminal appeal against the judgment of conviction has already been entertained by the High Court and the sentence part already stood suspended and subsequently the High Court vide its order dated 06/02/2019 has also suspended the conviction part and therefore the reason for termination of service does not survive any further.

4. This Court is not inclined to accept the said argument of the petitioner for the simple reason that, the order of termination was passed on 28/11/2016 and the suspension of conviction was only after about 3 years i.e. on 06/02/2019. Thus, on the date of termination, the judgment of conviction was in operation.

5. The petitioner on an earlier occasion had also preferred a Writ Petition before this Court i.e. WPS No. 5730/2018 and this Court had permitted the petitioner to withdraw the same after he obtains a suitable order against the conviction in the Criminal Appeal. By disposal of the said Writ Petition what was meant was that, the petitioner could only challenge the order of termination in case if the judgment of conviction is set-aside by the Appellate court which till date has not materialized.

6. Given the said facts, this Court finds it difficult to entertain the Writ Petition at this juncture merely because the conviction of the petitioner has

been suspended vide order dated 06/02/2019 in Criminal Appeal No. 650/2016.

7. At this juncture, the counsel for the petitioner submits that, the petitioner has preferred an appeal against the judgment of termination before the Appellate Authority in the department and the appeal is still pending consideration before the Appellate Authority.

8. Given the fact that this Court in exercise of its powers under Article 226 of the Constitution of India is reluctant to entertain the Writ Petition. The said reluctance would not by itself preclude the Appellate Authority in deciding the appeal on merits.

9. The Appellate Authority while deciding the appeal can take into consideration all the factual matrix and the subsequent developments that the petitioner would be raising before the Appellate Authority.

10. If the appeal has till date not been decided, the authorities are expected to decide the appeal at the earliest.

11. The Writ Petition accordingly stands disposed off.

Sd/-
(P. Sam Koshy)
JUDGE