

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 708 OF 2015

Dnyaneshwar Vishwanath Borade,
Age : 34 Years, Occu. At present Nil,
R/o. A-2, Near Sai Prasad Housing Society,
Nimbagaon Korhale, Post Shirdi,
Taluka Rahata, District Ahmednagar .. PETITIONER

VERSUS

Shri. Saibaba Sansthan Vishwastha
Vyavastha, At Post Shirdi,
Taluka Rahata, District Ahmednagar
Through its Chief Executive Officer .. RESPONDENT

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Advocate for the Petitioner : Mr. P.V. Barde
Advocate for respondent : Mr. N. R. Bhavar

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CORAM :T.V. NALWADE AND
SUNIL K. KOTWAL ,JJ.
DATE : 15th JANUARY, 2019

JUDGMENT(PER T.V. NALWADE, J] :-

The petition is filed for relief of quashing and setting-aside termination order dated 06.12.2010, issued by the respondent-employer against the petitioner.

2. Both the sides are heard.

3. The submissions made and the record shows that the petitioner was appointed as Residential Medical Officer by the respondent on

26.12.2006. The incident in question took place on 18.06.2009 in which a boy by name Akash Dange, aged about 11 years, was brought to Casualty Department of respondent Sai Baba Hospital, Shirdi at 5.00 p.m. In view of the nature of duty of the petitioner viz Residential Medical Officer, he was available on duty. The petitioner did not admit the said boy and referred the said boy to another hospital by name Sainath Hospital run by same trust at 5.30 p.m. The patient was again brought within one hour from Sainath Hospital to Sai Baba Hospital where the present petitioner referred the patient to Pravara Hospital, Loni, but in transit, boy/patient expired.

4. On 03.07.2009, the charge-sheet was served on the petitioner about the aforesaid negligence shown by him. The petitioner took the defence that there was no space available in the Intensive Care Unit(I.C.U) and another Intensive Care Unit was fumigated and inoperative. There was no space for patient and so he had referred the patient to other hospital. After following the procedure, the inquiry officer, who was from the legal faculty, gave report that petitioner was guilty. This report was accepted and after giving opportunity to the petitioner to have his say, the order of termination came to be passed.

5. To challenge the order of termination complaint (U.L.P) No. 7/11 was filed by the petitioner in Labour Court, but it was withdrawn and

then present Writ Petition has been filed to challenge the order of termination passed by the respondent hospital.

6. During the argument for the first time, the learned counsel for the petitioner produced on record the protocol about Antivenom treatment, which needs to be given when there is snake-bite. This Court has carefully gone through the said procedure prescribed in the said protocol and the procedure does not show that there is necessity to have I.C.U or G.I.C.U and protocol was only with regard to the administration of antivenin/antivenom dose.

7. The report submitted by the inquiry officer shows that the petitioner did not dispute before the inquiry officer that he did not give treatment to the patient. He took the defence that due to non-availability of the aforesaid facility and as all the beds were occupied, he had referred the patient to other hospital. Only due to this approach of the petitioner, the patient was taken to other hospital i.e. Sainath Hospital of the same trust, but in that hospital, there was no Physician available. Attempt was made to shift the patient to other hospital like Pravara Hospital, Loni, but the patient died in the transit due to snake-bite. Even the witness examined by the petitioner shows that no treatment was given to the said boy. The evidence shows that in Sainath Hospital, where patient was referred, there was no facility of treating

such youngster. The defence evidence shows that they had not even contacted the other hospital and probably the patient was referred from Sainath Hospital to Saibaba Hospital i.e. the present respondent hospital. The inquiry officer found that the witness examined by the petitioner tried to support him, but there was no record to corroborate and on the contrary, they had felt that the patient had come from Sainath Hospital to the respondent Saibaba hospital, but the petitioner had again referred the patient to Pravra Hospital when the respondent Sai Baba Hospital have all the facilities as it is a super specialty hospital. The petitioner is M.B.B.S and he could have definitely treated the patient in this hospital, but he avoided to give the treatment when as per the witness examined by him, the boy was talking when he was brought first to the respondent hospital. Any alternate arrangement could have been made in super specialty hospital and there was only need of giving treatment as per the antivenom treatment as prescribed in the protocol. It appears that patient had died in the transit when he was taken to Pravra Hospital Loni, from Saibaba Hospital.

8. Before the inquiry officer, the witnesses who had taken the boy to the respondent hospital, were examined and they have specifically stated that the patient reached the Saibaba Hospital first at about 5.00 p.m., but the petitioner- doctor, who was present, asked them to take him to the Sainath Hospital by saying that there was no treatment

available in Saibaba Hospital on snake-bite. The evidence is given that for about half hour after arrival of the patient, Dr. Borade/petitioner even did not see/examine the patient and thereafter patient was referred to Sainath Hospital. There was no conveyance (Ambulance) other than the motor-cycle and the patient was taken on the motor-cycle to Sainath Hospital. In the Sainath Hospital also where the patient was referred proper treatment was not available and they advised to take the patient to Saibaba Hospital. Evidence given by the relatives of the patient that only due to negligence shown by Dr. Borade, the patient died. Suggestion was given that patient was brought late to Saibaba Hospital, but it is denied and there was admission of the witnesses examined by the petitioner that the patient was in a position to talk. Witness Smt. Gole a Nurse, who was there, is also examined to show that Dr. Borade did not give treatment and asked the relatives to take the patient to Sainath Hospital. Her evidence shows that at 6.30 p.m., the patient was again brought to Saibaba Hospital, but at that time, he was unconscious when his condition was not serious on the first occasion. Her evidence shows that Dr. Borade gave some treatment and even the dose of antivenom was given under his instructions. This evidence is little bit inconsistent with the stand taken by the petitioner.

9. Due to all these circumstances, the inquiry officer formed opinion that when it was possible to give treatment to the patient at 5.00 p.m.

when he was first brought and when he was conscious, the petitioner avoided to give the treatment and due to his negligence, the death took place. The Inquiry Officer observed that the petitioner tried to give lame excuses mentioned above and those were not available. It can be said that in view of the statement given by the Nurse, the defence that the treatment could not be given on the first occasion, could not have been accepted by the Inquiry Officer.

10. There is some evidence of doctors and the staff of Sainath Hospital, but that evidence shows that they had immediately asked the relatives to take back the patient to Saibaba Hospital as it is Super Speciality Hospital. All the facilities which are required by the doctors were available in the super specialty Hospital and so it can be said that for some time, such arrangement could have been made as it was the case of urgency. The defence that there was no Paediatrician doctor available cannot be considered as it was a simple case of snake-bite and treatment was to be given as per the antivenom treatment prescribed in the protocol.

11. The trust Hospitals are created by Saibaba Trust Shirdi to help the poor persons. The persons like the present petitioner defeat the purpose of creation of such hospital in rural areas. Due to the approach of such doctors, the people have started losing trust on the persons of this

profession. Such cases cannot be taken lightly and no lenient view is possible in such cases. This Court holds that it is not possible to interfere in the order of penalty made against the petitioner. In the result, the petition stands dismissed.

[SUNIL K. KOTWAL]
JUDGE

YSK/

[T.V. NALAWADE]
JUDGE