

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.5594 of 2018

Pushpa Sood & Anr. Vs. The Maharashtra State Information Commission & Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Petitioner in person.
Mr. H.R. Dhumale, AGP for respondents

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 13, 2019

By this writ petition, the petitioner in person has challenged order dated 20th March, 2017, passed by respondent No.1 i.e. The Maharashtra State Information Commission. There are other prayers also made in this writ petition regarding payment of amounts towards compensation and damages by the respondent No.1. Mr. H.R. Dhumale, learned AGP entered appearance on behalf of respondent No.1 also.

2. The principal grievance raised on behalf of the petitioner is that she had sought information on three points from respondent No.4 i.e. the Dean of Indira Gandhi Government Medical College, Nagpur. This application was filed on 29/1/2015. The petitioner in person submits that she is not pressing the dispute on the first two points on which the information was sought. The present petition is

agitated for the information sought under point No.3 in the said application. The information sought under the said point No.3 was a document showing that the petitioner had handed over charge on 01/06/2011, from the post of Laboratory Technician, as recorded in the last pay certificate issued by the office of the respondent No.2 on 22/06/2011.

3. In response to the said application, information was provided on behalf of the said College in the form of certificate which pertained mostly to the manner in which the petitioner allegedly signed muster despite the fact that she was allegedly already relieved from the said post.

4. Aggrieved by the same, the petitioner filed an appeal before the First Appellate Authority. An order was passed by the authority recording that the proof regarding handing over of charge by the petitioner from the said post on 01/06/2011, was not available.

5. In this situation, the petitioner filed second appeal before the respondent No.1. By impugned order dated 20th March, 2017, the appeal was disposed of by directing that if the first appellate authority had communicated that such document was not available and there was some discrepancy in the affidavit, the grievance could be raised before the concerned

authority.

6. From the documents that are available on record, it appears that the thrust of the grievance raised on behalf of the petitioner is that it was claimed that she had handed over charge of the post of Laboratory Technician on 01/06/2011, as recorded in the last pay certificate dated 22/06/2011, while no such document signifying handing over of the charge existed. If that be so, the material on record does show that the stand taken by the concerned respondent was that information regarding such document could not be provided because no such document was available.

7. In this context, the observations made by a Division Bench of this Court in **Writ Petition No.5114 of 2018, Mrs. Pushpa w/o Devendra Sood and Another Vs. The State of Maharashtra through the Chief Secretary and Others**, assume significance. In the said writ petition, the petitioner in person had sought execution of orders passed by the respondent No.1. The Division Bench of this Court took note of the identical grievance sought to be raised by the petitioner and the reliefs regarding such facts and observations are as follows :

“2. The information which was sought by the petitioner was in respect of three points as stated in application (Annexure-P1). Out of these three points, the information which the petitioner claims to have not been furnished pertains to only

one point. This point seeks information from Indira Gandhi Government Medical College, Nagpur ('the Department' in short) about a document standing as proof of the petitioner handing over the charge of the post of Laboratory Technician on 01.06.2011 as per Last Pay Certificate ('LPC' in short) dated 22.06.2011.

3. The State Information Commissioner vide order passed on 04.03.2017 has directed the Department to furnish this information to the petitioner and alternatively it is also directed, if the information did not exist or not available, the Department may state so on oath in the form of an affidavit. The State Information Commission has also directed the Department to send its report to him.

4. A copy of affidavit dated 06.12.2018 has been filed on record and the contents of the same are not in dispute. It indicates that although there was a relieving order passed on 01.06.2011, the document showing handing over of the charge by the petitioner on 01.06.2011, was not available with it. This affidavit appears to be in consonance with the stand of the petitioner that information sought by her on the aforestated point itself did not exist altogether though the LPC may show otherwise.

5. It is also the submission of petitioner that on 01.06.2011, the date which is shown to be the date on which charge of post held by the petitioner was actually handed over, the petitioner was on medical leave and therefore, there could not have been any relieving of the post actually taking place on 01.06.2011. This has been submitted by the petitioner appearing in-person. If this is the stand of the petitioner, it has to taken that the information sought by her never existed,

that such non-existence was known to her and the affidavit dated 06.12.2018 of the Department only shows that as of now the information is unlikely to be found out.

6. This would show that so far as the information sought under the provisions of Right to Information Act, 2005 is concerned, the issue stands closed. The affidavit filed by the Department saying that document dated 01.06.2011 showing handing over of charge by the petitioner is not available with it, puts a lid over the issue. Since, the order of the State Information Commission has already been complied with on furnishing of the affidavit which was received by the petitioner, nothing has remained in the petition and petition is disposed of as infructuous.”

8. Admittedly, in the present petition also the grievance is sought to be made only with regard to information sought in respect of point No.3. The observations made by the Division Bench of this Court show that the contention of the petitioner that she never actually handed over charge on 01/6/2011, because she was on medical leave has been taken note of. The Division Bench also took note of the fact that it was conceded by the concerned authority that there was no document available showing that the petitioner had handed over charge on 01/6/2011 and that such statement on behalf of the concerned respondent had put a lid over the issue. In the present case, it becomes clear that information sought on point No.3 was responded to by stating that no such document was

available. If that be so, the information sought by the petitioner regarding such document was satisfied by the statement that no such actual document of handing over charge was available. In this situation, for the petitioner to insist upon the information about a document that did not exist cannot be fathomed by this Court. It is already noted by the Division Bench of this Court in the above quoted order that no such information regarding existence of a non-existing document could be provided to the petitioner. In such a situation, this Court is of the opinion that no grievance could be made by the petitioner. The prayer clauses pertaining to claim of compensation and damages cannot be entertained in this writ petition, which essentially challenges orders passed by the authorities under the provisions of the Right to Information Act, 2005. Therefore, this Court finds that there is no merit in the present writ petition and accordingly, it is dismissed.

JUDGE