

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.13970 of 2012 (O&M)
Date of Decision:5.2.2019

Ashutosh Gupta

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.S.P.Arora, Advocate and
Mr.Himanshu Arora, Advocate for the petitioner

Ms.Shruti Jain Goyal, DAG, Haryana

Mr.Satnam Sishadia, Advocate for
Mr.Ramesh Malik, Advocate
for respondents no.2 and 3

RAJIV NARAIN RAINA, J.

1. The petitioner was appointed as Teacher (Lecturer) on 30.4.1990 in the Department of Psychiatry in Medical College, Rohtak, Pt.B.D.Sharma PGIMS, Rohtak. He was absent from duty without leave from 10.5.1994 onwards. He was dismissed from service on 28.7.2010 after charge-sheet and regular enquiry for remaining willfully absent from duty, and, besides, indulging in private practice which was against the ethical code and in violation of Clause 19(1) of the Haryana Medical Education Service Rules, 1988 which prohibits a member of service from engaging in private practice in any form. There is provision that every member of the service will get non-practicing allowance on such rates and terms and conditions as may be specified by the Government from time to time. Accordingly, the petitioner was charge-sheeted under Rule 7 of the Haryana Civil Services (Punishment

guilty of the charges levelled against him in the charge-sheet. The petitioner admitted in his statement before the Enquiry Officer that he was doing private practice during his absence without prior intimation and sanction of leave by the competent authority. The respondent-Pt.B.D.S.PGIMS, Rohtak was generous enough to offer him opportunity to resume duty vide letter dated 20.5.1994. He was advised personally by the Director to come back to work, but the advice went unheeded and the petitioner continued to remain absent from department and indulging all the time in private practice as a Psychiatrist. A further opportunity was given to him to resume duty vide letter dated 27.5.1996, but he did not take the cue. Accordingly, a second show-cause notice was served on the petitioner alongwith the enquiry report indicating that penalty of dismissal is proposed to be imposed on him. He did not submit reply to the show-cause notice nor did he return to work. It was in these circumstances that the competent authority awarded punishment of dismissal from service in July, 1997 after complying with all the codal formalities.

2. Feeling aggrieved by the dismissal order, the petitioner filed a suit for declaration before the Addl.Civil Judge (Sr.Divn.), Rohtak. The suit was dismissed by judgment and decree dated 23.7.2009. The petitioner challenged the judgment and decree dated 23.7.2009 before the District Judge, Rohtak. The first appellate court by his judgment dated 6.4.2010 set aside the order of dismissal recording that the order suffered from a jurisdictional error. Inasmuch as, the letter of appointment of the petitioner as Teacher (Lecturer) in the Department of Psychiatry, Medical College, Rohtak was issued by the Joint Secretary, Health for Commissioner & Secretary to Govt. Haryana, Health & Medical Education Department in the name of

Governor. The first appellate court held that the Commissioner had no jurisdiction to pass the order of dismissal and on this technical plea, allowed the appeal and set aside the judgment and decree of the Civil Judge by making it clear that the Governor of Haryana may pass an appropriate order as he deems fit as if the order of dismissal by the Commissioner has not been passed. But in issuing this direction, the learned District Judge, Rohtak held that the proceedings conducted upto the date of dismissal are valid. A positive finding was returned by the District Judge that the order does not suffer from any illegality, except that it was passed by the Commissioner whereas it should have been the Governor passing the order. The PGIMS, Rohtak accepted the order and did not file any further appeal. However, against the order passed by the District Judge, Rohtak, the petitioner preferred RSA No.253 of 2011 which was dismissed by this Court on 11.5.2012 by passing the following order:-

“Since there is delay of 198 days in refiling the instant appeal, an application under Section 151 CPC has been filed seeking condonation of said delay, duly accompanied by an affidavit of the the plaintiff/appellant.

For the reasons stated in the application, duly supported by the affidavit, there exist sufficient grounds to condone the said delay. Hence the application is allowed and delay in refiling the appeal is allowed.

RSA No.253/2011

Plaintiff is in second appeal directed against the appellate judgment and decree dated 6.4.2010 passed by the learned District Judge, Rohtak whereby the appeal filed by the plaintiff has been accepted and the suit decreed by setting aside the impugned order of dismissal of his service in disciplinary proceedings, however, with a liberty to the Governor to pass appropriate fresh orders, if any, and;

further challenge is to the judgment and decree dated 23.7.2009 passed by the learned Additional Civil Judge (Senior Division) Rohtak whereby the suit of the plaintiff/appellant was dismissed.

Facts in brief are that plaintiff was appointed as a Lecturer on 30.4.1990 in the Department of Psychiatry in Medical College, Rohtak now Pt.B.D.Sharma PGIMS Rohtak. He was charge sheeted under Rule 7 of the Punishment and Appeal Rules,1987 vide memo dated 20.12.1994 for major penalty due to his willful absence from duty without any reasonable cause w.e.f. 10.5.1994 and indulging in private practice in violation of Clause 19(1) of Haryana Medical Education Service Rules. After enquiry, show cause notice was issued to the plaintiff vide letter dated 21.2.1997 alongwith a copy of enquiry report proposing penalty of dismissal from service. The plaintiff instead of filing his reply to the show cause notice wrote a letter dated 15.4.1997 alleging non-supply of enquiry report. The disciplinary proceedings culminated into passing of punishment order dated 25/27.7.1997. The plaintiff filed civil suit on 30.9.1998 challenging the punishment of dismissal from service. The learned trial court on the basis of evidence adduced, upheld the order of dismissal and dismissed the suit vide judgment and decree dated 23.7.2009. Aggrieved against the same, plaintiff filed appeal and the learned appellate court while affirming the findings in respect of validity of the enquiry proceedings set aside the order of dismissal on the jurisdictional power of the Commissioner to pass such an order with further liberty to Governor i.e. the competent authority to pass a fresh order as it deems fit.

At the time of arguments learned counsel for the plaintiff/appellant submits that the competent authority i.e. Governor of Haryana has passed a fresh order of termination of the services of the appellant and therefore, prays for withdrawal of the appeal to challenge the order, if so advised, in accordance with law.

Dismissed as withdrawn with the liberty aforesaid.”

3. The matter was reconsidered with reference to the dismissal orders dated 25/28.7.1997 and a fresh order was issued on 13.7.2010. The dismissal orders have been substituted as an order in the name of the Governor who was pleased to confirm the State Government orders dated 25/28.7.1997 regarding dismissal of the petitioner from service. The order has been issued by the Financial Commissioner and Principal Secretary to Govt. Haryana, Health and Medical Education Department by observing that generally all orders of the Government are issued in the name of Governor of Haryana. Further many a times in place of Governor of Haryana, the phrase “Government of Haryana” is used. At times even this phrase is not used while issuing various orders of the State Government. The Financial Commissioner observed in his order and rightly so that the important aspect to be seen in this regard is that the orders are legally valid and have been issued with the due approval of the competent authority. Whether after getting the approval of the competent authority in the the name of the Governor of Haryana/Government of Haryana or Secretary to the Government of Haryana is written, it makes no difference in the quality of the orders. In all situations, it remains an order of the Government. This order dated 25/28.7.97/13.7.10 (Annex. P-8) has been called in question by the petitioner in the present proceedings.

4. Learned counsel for the petitioner submits that the impugned order (Annex. P-8) has not been passed in terms of the observations made by the first appellate court in its order dated 6.4.2010 with respect to the jurisdictional error. The flaw pointed out by the first appellate court has been mechanically complied with by respondent no.1 by just adding the phrase that the Governor has confirmed the orders dated 25/28.7.1997 and while

making observations, respondent no.1 has tried to substitute his opinion over and above the observations of the first appellate court, and therefore, the order deserves to be set aside on this short ground due to mechanical approach of respondent no.1. The learned first appellate court has specifically held that the Governor may pass appropriate order as he deems fit as if the order of dismissal by the Commissioner has not been passed and the proceedings conducted up to that date shall be quite valid. Proceedings thereafter suffer from the same infirmity as were existing before the first appellate court. The order of the Commissioner has become non-existent, in view of the judgment of the first appellate court.

5. Learned counsel for the petitioner further submits that respondent no.1 has misconstrued the order to mean as if the order of dismissal could be passed by just changing the title and substituting fresh order in place of the old one. The judgment of the District Judge did not intend to suggest that the phrase in the order of dismissal to be substituted and instead of complying with the order of the first appellate court, the first respondent has chosen to resort to justifying his stand against the findings in the impugned order by suggesting that the situation remains the same and would not make any difference in the quality of the order and in all situations, it remains to be order of the Government. It is, therefore, urged by the learned counsel for the petitioner that the order is arbitrary, illegal and discriminatory and in contravention of the findings of the learned first appellate court and the order being without jurisdiction could not be ratified at later point of time. Nothing new has come into existence except a mention in the order that the Governor of Haryana is pleased to confirm the previous order.

6. I have considered the submissions of Mr.Arora, learned counsel for the petitioner, but find no substance in them. The Governor of Haryana was not expected personally to pass the order of dismissal. Conduct of government business is regulated by Article 166 of the Constitution of India which provides as follows:-

“166. Conduct of business of the Government of a State

(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order on instruction which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.”

7. The Constitutional provision requires that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor. In the present case, nothing has been produced or shown by the petitioner which may detract from the impugned order. Therefore, the impugned order cannot be called in question on the ground that it is not an order or instrument made by the Governor. Neither has any provision of law been shown either under the Constitution or any other law which requires the Governor, in the circumstances of this case, to act in his discretion personally.

This aspect was not considered by the learned District Judge. The Governor

Lal Sehgal vs. State of Punjab, AIR 1977 S.C. 1233 is distinguishable. Even the learned District Judge did not find the order suffering from any illegality. The defect, if any, stands cured in the impugned order. The liberty granted to the petitioner while withdrawing his second appeal cannot reach out to the merits of the case and those would be confined only to the jurisdictional issue whether the impugned order bears stamp and is expressed in the name of the Governor of the State. I would, therefore, find no valid reason to set aside the impugned order dated 25/28.7.1997/13.7.2010 (Annex. P-8). No interference is warranted in exercise of discretionary jurisdiction of this Court provided under Article 226 of the Constitution of India. No other argument has been raised or pressed.

8. Furthermore, the petitioner has failed to maintain absolute integrity and devotion to his duties by engaging himself in private practice and by remaining absent willfully for six years which are acts unbecoming of a government employee.

9. In view of the above, I find no merit in this writ petition which is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

5.2.2019
MFK

Whether speaking/reasoned

Yes

Whether Reportable

No