

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

**C.W.P 25476 of 2017
Date of decision : 28.02.2019**

Dr. MAHESH KUMAR

.....Petitioner

versus

**PT. BHAGWAT DAYAL SHARMA UNIVERSITY OF HEALTH
SCIENCES, ROHTAK AND ANOTHER**

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sushil Jain, Advocate
for the petitioner.

Mr. Anurag Goyal, Advocate
for the respondents

RITU BAHRI, J. (Oral)

The present petition has been filed under Article 226 of the Constitution of India for quashing impugned order dated 02.11.2017 (P-11) passed by respondent No. 1, whereby services of petitioner were ordered to be dispensed with immediate effect without issuance of any charge sheet under Rule 7 of the Haryana Civil Services (Punishment and Appeals) Rules, 2016

On notice of the petition, a written statement has been filed on behalf of the respondents admitting the fact that the petitioner was appointed as Sr. Resident on tenure basis. He was appointed by way of appointment letter on tenure basis for a period of three years, as per appointment letter (P-1). The petitioner was on night duty as A&E (Accidental & Emergency/Casualty) along with Dr. Omkar and Ms. Ruchi, an intern. However, in the reply it has been stated that as per enquiry report dated 04.10.2017 (R-1/1), the petitioner was not

discharging his official duties and was absent from his duty, when the deceased avni was brought to A&E and there was gross negligence and dereliction of duty on the part of petitioner.

On 08.12.2017. this Court passed the following order:-

The issue in this petition is as to whether the petitioners' services have been correctly terminated or not, on the ground that he was negligent in dealing with a patient (a 9 month old baby), unfortunately leading to her death on 26.08.2017.

The stand of the respondents is that the petitioner, being on night duty between 9.00 p.m. to 8.00 a.m. on 25/26.08.2017, was actually missing from duty and was presumably sleeping from 4.00 a.m. Onwards.

The baby, Avni by name, is stated to have been first brought to the emergency ward of the PGIMS, Rohtak, at about 6.45 a.m., at which time, according to the petitioner, he had stepped out to go to the washroom for about 10-15 minutes, after he had dealt with another patient (baby of Chinta) immediately before that, by first trying to contact the Neonatal Intensive Care Unit (NICU) on the landline phone of the hospital and thereafter, not having got any response from that unit, having tried to contact the doctor there from his own mobile phone but without success.

As regards his being absent between 4.00 a.m. to 9.00 a.m., it is the contention of the petitioner that even as per a video recording made, he can be seen on that recording, at 7.49 a.m, 7.52 a.m. and 8.33 a.m. He has also referred to the testimonies of the Intern and the Post Graduate Student (Doctor) posted along with him in the emergency ward at the relevant time, before the enquiry committee, copies of which have been annexed as Annexures P-5 and P-6 respectively with the petition.

As per the said testimonies/statements of the aforesaid persons, i.e. Dr. Omkar and Ruchi, effectively, the petitioners' version is correct.

The stand of the respondents however is that as per the CCTV footage

he was never seen coming out of the emergency ward from the main door at the time when he stated that he came out to go to the washroom, i.e. 6.30 a.m., and as regards the petitioners' contention that he had actually accessed the washroom through an internal door, that door is actually blocked by a bed and locked, and therefore, he could not have had access to the washroom from that side.

Upon specific query put to the learned counsel for the respondent-University as to how he would refute the video recording produced by the petitioner, to the effect that he was actually present at 7.49 a.m., 7.52 a.m. and 8.33 a.m on the relevant dates, he having gone in and out of the main door itself at those times to examine a patient in the next room (as per the version of the petitioner), Mr. Goyal, on examination of the video recording produced by the learned counsel for the petitioner on a compact disc., submits that he obviously cannot deny what is on the video recording in the CD presented.

That being so, while staying the operation of the impugned order Annexure P-11, the Vice-Chancellor of the respondent University is directed to file his personal affidavit explaining as to how it is stated in the affidavit of the Registrar (supporting the impugned order passed by the Vice-Chancellor), that the petitioner went to sleep at 4.00 a.m.

This would be especially so as in the video recording produced by the learned counsel for the petitioner, the internal door by which he is stated to have access to the washroom, is shown to be open, which could not be denied even by learned counsel for the respondents on having perused the video recording on direction of this Court.

Thus, the stand of the respondents that the said door was inaccessible, with it not being stated anywhere that it was subsequently opened, would seem to be unsustainable.

For the purpose of the affidavit of the Vice-Chancellor to be filed, adjourned to 18.12.2017. The petitioner shall be reinstated in service forthwith, in the aforesaid circumstances.

A copy of the video recording shown to the learned counsel for the respondents be given to the learned counsel for the respondents, as

also placed on the record of this case file.”

In compliance of the above said order, an affidavit has been filed by Dr. M.C Gupta, the then Vice Chancellor on behalf of respondent Nos. 1 and 2 wherein it has been stated that the enquiry Committee took the cognizance of the statement of Dr. Mahesh in front of Vice Chancellor and then Director on 27.08.2017, in which the petitioner admitted that he went to sleep after 4.00 a.m on 26.08.2017. The issue of absence at 4.00 a.m is based on his self statement before the authorities but in the written statement there is nowhere mentioned that he was absent from 4.00 a.m to 9 a.m. Further on both the occasions when the patient Avni was brought in Room No. 11, she was not attended by the petitioner, who was the only Sr. Resident on duty at that time. He did not attend the patient and let the in-tern to give description without consultation. Petitioner himself submitted before the Enquiry Committee that he had gone out of Room No. 11 at 6.30 a.m for washroom and was not available in A&E in Room No. 11 when the patient was brought. In the CCTV footage at around 6.30 a.m, the petitioner has not shown to come out from Room No. 11. CCTV footage did not show that between 6.00 a.m to 7.00 a.m, the petitioner left the room No. 11. The only stand taken in the affidavit is that the petitioner who was the only Sr. Resident to give proper treatment had not attended patient Avni during 6.00 to 7.00 a.m. The Enquiry Committee after going through the verifications of the documents, statements of witnesses and admission of petitioner, found that there is gross negligence on the part of petitioner. The report of the enquiry committee is based on the entire documents, statements and CCTV footage and not only on the sole ground of CCTV footage. No CCTV footage had been seen by the authorities.

This Court then on 07.01.2019 passed the following order:-

Challan (Annexure P-13) has been presented against the present petitioner and two students, (i) one Senior Resident and (ii) Post Graduate Intern.

Grievance of the petitioner is that he has completed three years of service, but his experience certificate contains a condition that this certificate will be subject to the outcome of the criminal trial.

Learned counsel for the respondents will clarify, as to whether any similar observation has been made in the case of other Senior Resident. He will also inform as to what steps have been taken against the above said two persons

Adjourned to 23.01.2019.

In compliance of this order, an additional affidavit has been filed by Prof Dr. O.P. Kalra, Vice Chancellor, UHS, Rohtak and as per this additional affidavit, the door shown in the video opening in the Operation Theatre (Surgery) is not a thoroughfare and moreover to access this washroom inside Operation Theatre (Surgery), it is mandatory to change the shoes and operation theatre dress. The washroom situated in the Operation Theatre (Surgery) is exclusively reserved for the employees of Operation Theatre (Surgery) and not for Pediatric Department. It has further been stated that the petitioner was on duty along with Dr. Omkar and Dr. Ruchi. Dr. Ruchi informed the Jr. Resident Dr. Omkar, who did not examine the child and gave verbal advice to Dr. Ruchi on treatment, after that Dr Ruchi prescribed treatment on card and the child was prescribed citrizine and sent home. The child was again brought in A&E at Room No. 11 at 6.57 a.m and again Dr. Ruchi attended the patient and contacted Dr. Omkar who again advised the intern to prescribe the patient Syrup Emeset without examining her and sent her back.

Learned counsel for the respondent has informed the Court that Dr. Ruchi and Dr. Omkar have been warned and Dr. Omkar has been suspended for one month with immediate effect and has been warned not to repeat such lapse in near future.

After going through the affidavit and additional affidavit, it transpires that in the earlier affidavit dated 16.12.21017, the respondent had taken a stand “that the fact that the petitioner had slept between 4 a.m to 9 a.m is provided by the concerned dealing to the panel counsel without approval of the authorities and now in the present affidavit dated 05.02.2019, the respondent had changed the stand that the fact that the door shown in video was inaccessible was provided by the concerned dealing to the penal counsel without approval of the authorities.

The challan has been presented against the petitioner, Dr. Omkar and Ruchi but the department had dispensed with the service of the petitioner and Dr. Omkar has only been suspended for one month and Dr. Ruchi has been given warning to remain careful in future. The grievance of the petitioner now further is that he has completed three years of service but his experience certificate contains a condition that this certificate will be subject to outcome of the criminal trial.

Now the question for consideration before this Court is that whether such a condition can be imposed in the experience certificate.

On 08.12.2017 learned counsel for the respondent after watching the CCTV footage admitted that he cannot deny that the petitioner was present at 7:49 a.m, 7.52 a.m and 8.30 a.m. This CCTV footage was not made basis for passing impugned order, as per affidavit and additional affidavit filed on behalf of the respondent. Even as per statement of Dr. Omkar he stated that on night

duty, he was taking samples, then intern Ruchi came to him and told the chief complaints of patient Avni. He saw the patient and the same was stable. The medicine was prescribed after few minutes some other attendant came for the same case, then Dr. Omkar told them to get the patient and they did not turn back. The petitioner was on night duty and went outside for washroom as told by the staff and the intern (P-5).

To the same effect is the statement given by Dr. Ruchi (in-tern) who stated that patient Avni was brought to casualty with complaint of cough for one day. The patient Avni seems to be stable and she asked Dr. Omkar that a patient has come with cough. He told her to prescribe Syrup citrizine and patient went with relatives. Dr. Omkar was busy in taking samples of another patient and Dr. Mahesh went outside to washroom around 10 minutes before the patient Avni was brought (P-6).

The statements (P-5 and P-6) and CCTV footage shown to this Court shows that the petitioner was not in A&E when patient Avni was brought to the hospital. The petitioner went to washroom. Challan has been presented against petitioner, Dr. Omkar, Dr. Ruchi (in-tern) but the department dispensed with the services of petitioner and gave warning to Dr. Omkar & Dr. Ruchi (in-tern). Dr. Omkar has been suspended for one month only.

Keeping in view the above factual position, the present petition deserves to be allowed to the extent that the respondent-University shall not impose a condition in the experience certificate of the petitioner that this certificate will be subject to outcome of the criminal trial.

February 28, 2019

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No