

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION***

WRIT PETITION NO. 13612 OF 2018

Dr. Priya Jitendra Jadhav

... Petitioner

V/s.

The Commissioner and Ors.

... Respondents.

Ms. Vaishali Jagdale for the Petitioner

Ms. Sheetal Mane for the Respondent - MCGM

***CORAM : NITIN JAMDAR &
M.S. KARNIK, JJ.***

DATE : 23 JANUARY 2020.

P.C. :-

The Petitioner, working as a Medical Officer has challenged the order of reverting the Petitioner to the post of Assistant Medical Officer on basic pay.

2. The Petitioner joined as an Assistant Medical Officer on 29 July 2008 in the services of Respondent – Mumbai Municipal Corporation. The Petitioner was promoted on 11 July 2011 as a Medical Officer. On 8 September 2014 a complaint was filed by the friend of one patient Dattatray V. Sakpal, who had passed away, making a grievance that the Petitioner had not treated the deceased patient with due care. Charge-sheet was served on the Petitioner. It was stated that the Petitioner did not check the patient from 5.15

a.m. to 6.38 a.m. The Petitioner submitted reply. Statement of witnesses were recorded. A case of the Petitioner was referred to a Committee. Report of the Enquiry Officer was submitted on 29 July 2015. After considering the reply, an order of demotion was passed.

3. We have heard the learned Counsel for the parties.

4. The learned Counsel for the Petitioner submitted that the allegations made against the Petitioner are not correct. The Petitioner had shown diligence in examining the patient. Initially the learned Counsel sought to contend that copy of the CC TV footage was not given. When it was pointed out that no such case is made out, it was contended that CC TV footage would show otherwise. It was also contended that the deceased patient did not need immediate attention and therefore, the deceased patient was not examined and later on necessary care was taken. It was also contended that expert committee has opined that the statements made by the accused, the complainant and witnesses are contradictory.

5. Reply affidavit has been filed on behalf of the Respondents.

6. In the writ jurisdiction it is not possible for us to examine the disputed questions as if it is an appeal. As regard the CC TV footage, inspection has been given to the Petitioner. CC TV

footage shows that that the Petitioner did not check the patient for more than one and half hour. That the deceased patient was in a critical condition cannot be disputed. If the Petitioner failed to even get up from the chair to check the patient and an inference is drawn of negligence it cannot be said that the employer acted with penalty. The material on record shows that when the patient was brought in, he was consistently complaining of chest pain. However, no ECG was taken. The Petitioner was admittedly incharge of the patient. As far as the report of the Committee is concerned, the Committee has simply stated that it cannot opine in this case. This cannot be considered in favour of the Petitioner.

7. Ample opportunities were given to the Petitioner, reply was filed and was considered. Principles of natural justice have been followed in the enquiry.

8. Considering the totality of the circumstances, no case is made out for interference in the writ jurisdiction.

9. The learned Counsel for the Petitioner submitted that the second enquiry is sought to be initiated against the Petitioner which may amount to double jeopardy. It is not necessary for us to opine on the same as it is not the subject matter of the Petition.

10. The Petition is rejected.

M.S. KARNIK, J.

NITIN JAMDAR, J.

Jyoti P.
Pawar

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