

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

WRIT PETITION NO.3526 OF 2020

Sandeep S/o Krishnadas Bansod

Vs.

State of Maharashtra through Department of Rural Development, Mantralaya, Mumbai and
others.

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

Court's or Judge's orders

Shri S. G. Karmarkar, counsel for the petitioner.
Shri D. P. Thakare, Addl. G. P. for respondent no.1.

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATED : 18/12/2020

1. Heard Shri Karmarkar, learned counsel for the petitioner. The petitioner has challenged the legality and correctness of communication dated 22/10/2020 issued by Medical Officer Primary Health Center, Mohpa that is respondent no.5 calling upon the petitioner to get himself examined by Medical Board constituted by Indira Gandhi Government Medical College, Nagpur, for the purpose of verifying the fitness to perform duty or otherwise.

2. It is the contention of learned counsel for the petitioner that when the petitioner had already submitted one medical certificate issued by authorized

medical attendant, there was no need to again submit medical fitness certificate issued by Medical Board of IGM Government College, Nagpur.

3. The purpose for which the certificate of Medical Board is required is elaborately stated in the impugned communication. It indicates that the petitioner was absent from duty continuously from 08/08/2020 and before that he had taken medical leave for three months from March to May 2020, which resulted in rendering of medical services to be provided by Primary Health Center in disarray. It is also stated that because of such long absenteeism without any justified cause on the part of the petitioner caused great inconvenience not only to the administration but also to the needy patients. On this background the authorities decided to have the petitioner produced before Medical Board so that his case of medical fitness could be thoroughly examined. But, the petitioner has not liked the idea and therefore, has challenged the said communication before this Court by filing the petition.

4. We find the attempt of the petitioner to avoid his examination by a Medical Board through this petition is defiance personified. The petitioner is a government servant. Whenever superior authorities of a government servant are of the opinion that in a given case, fitness certificate issued by a competent Medical Board is required, the government servant is duty bound to comply with the command of his superior authority. If a government servant does not abide by it, the government servant could be proceeded against departmentally for disobedience of the order of the superior and also for behaviour unbecoming of a government servant. In the present case, we are of the view that filing of this petition is likely to create an impression of the petitioner that he, in spite of being a government servant, is disobedient, disrespectful and a servant who does not perform his duty properly.

5. At this stage, learned counsel for the petitioner started vehemently submitting something. Due to such intervention dictation of the order had to be stopped. So, we again lent our ears to learned counsel for the

petitioner. He says that if any such directions are issued, it would amount to further harassment of the petitioner as the authorities that is the respondents have already made false charges against the petitioner and harassed the petitioner. He invites our attention to the communication dated 08/06/2016 issued by Dr. Yogendra Sawai, District Health Officer, Zilla Parishad, Nagpur to Medical Officer Sub-Center, Kalambi, Primary Health Center Gondkhairi, in support. We have gone through this communication. It does not record any finding regarding harassment of the petitioner by his superior officer. This communication on the contrary shows that this petitioner had made allegations not against any Medical Officer of Mohpa Primary Health Center but against Medical Officer of Sub-Center, Kalambi, Primary Health Center Gondkhairi and that those allegations were regarding non sanctioning of the annual increment, making of unauthorized cuts from the salary, stopping of the salary for the month of August 2015 and other related issues. These allegations were not about compelling the petitioner to appear before Medical Board legally constituted under Civil Services

Rules for his medical check up. In the present case, the observation of respondent no.5 is that the petitioner had remained absent from his duty for a long period of time from March 2020 till May 2020 and thereafter, he did not report on duty since 08/08/2020 which resulted into throwing out of gear the medical services provided by Primary Health Center, Mohpa, thereby causing great inconvenience to the patients and the administration. Therefore, order was passed to make the petitioner appear before Medical Board Indira Gandhi Medical College, Nagpur, so that he can be clinically examined not just by one Doctor but by a team of experts and opinion regarding his fitness could be elicited by the respondent authorities to enable them to take a proper decision regarding granting of permission to the petitioner to report on duty or about giving suitable duty to the petitioner in consonance with whatever medical report that would be given by the Medical Board. By remaining present before Medical Board, no prejudice can be said to be caused to the petitioner. On the contrary, we are of the view that his such check up by a team of medical experts is ultimately going to be in his

own interest and well being. But, it appears that the petitioner is still obstinate and does not want to remain present before the Medical Board. There is no provision of law which gives a right to an employee to refuse to present himself to a Medical Board when he is specifically called upon to do so by his superior authority.

6. In the result, we find no merit in the petition. Petition stands dismissed with cost of Rs.5000/-.

JUDGE

JUDGE