

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10328-2020

Date of Decision: 21.07.2020

Pooja Pawaria

.. Petitioner

Vs.

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Jagjot Singh Lalli, Advocate for the petitioner.

...

Manoj Bajaj, J. (Oral)

By means of this writ petition, petitioner Pooja Pawaria has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 06.11.2019 (Annexure P-11) passed by the Addl. Chief Secretary, Government of Haryana, Department of Health (respondent No.2), whereby she along with others was removed from service from the date of her absence from service (13.06.2017), by invoking Sub-Rule 2(a) of Rule 10 of the Haryana Civil Medical Services (Class-1) Rules, 2014 and condition No.3 of her appointment letter dated 03.09.2015 (Annexure P-3).

The facts leading to the writ petition are as under:

The petitioner after acquiring the qualification of MBBS Degree got herself enrolled with the Haryana Medical Council and thereafter, pursuant to the advertisement issued by the Health Department, Haryana applied for the post of Medical Officer (HCMS-I). The petitioner was selected and appointed at Civil Hospital, Panipat through letter dated 03.09.2015 (Annexure P-3) and as per the conditions of appointment, the appointment was temporary in nature and was liable to be terminated on one

month notice till she would remain in temporary cadre, but the said condition was not applicable in case, her services were to be terminated during the probation period of two years, which was further extendable.

The petitioner in order to pursue higher studies, applied for the MD Course in the stream of Pathology at PGIMS Rohtak, who was provisionally admitted on 10.06.2017 (Annexure P-4). She applied for extraordinary leave for the purposes of post-graduation by way of an application dated 13.06.2017 (Annexure P-5), which was forwarded by the Senior Medical Officer, Community Health Center, Bapoli, Panipat to the Civil Surgeon, Panipat on 16.06.2017. According to the petitioner, since nothing was conveyed to her in respect of the leave applied by her, therefore, she presumed that her leave application stood accepted and accordingly, she proceeded to pursue her course at PGIMS Rohtak.

The Civil Surgeon, Panipat sent a notice to the petitioner on 09.05.2019 (Annexure P-8), intimating about her absence since 13.06.2017 as her leave was not sanctioned and further, a request was made to her to join the duty at the earliest. The notice also contains the details of previous communications sent to the petitioner w.e.f. 07.03.2018, whereby she was intimated about her absence from service. The petitioner in response, again sent a request dated 24.07.2019 (Annexure P-9) for grant of extraordinary leave on the same ground. As the petitioner failed to join the services, therefore, the impugned order dated 06.11.2019 (Annexure P-11) was passed, whereby her services were dispensed with w.e.f. 13.06.2017, i.e. the date of her absence from service.

Learned counsel for the petitioner has argued that admittedly, an intimation was sent to the department by the petitioner regarding her

admission in the post graduation course and an application for grant of extraordinary leave was made through proper channel, therefore, it cannot be construed that her absence was unjustified. He has invited the attention of the Court to the leave application dated 13.06.2017 as well as the second request sent by her in response to the notice dated 09.05.2019. It is pointed out by him that the second request dated 24.07.2019 was not considered by the respondent No.2, therefore, it is not a case of wilful and deliberate absence from duty. Learned Counsel has prayed that the impugned order dated 06.11.2019 (Annexure P-11) is extremely harsh and since the petitioner is willing to join back her services, therefore, the impugned order warrants interference by exercising the extraordinary writ jurisdiction.

After hearing the learned counsel for the petitioner, this Court does not find any merit in the petition, as it is evident from the pleadings of the writ petition itself that the leave applied by the petitioner was never sanctioned and the petitioner absented from duty. The argument of the learned counsel that she carried a presumption while proceeding for her post graduation course at PGIMS, Rohtak that her leave stood sanctioned, is not worth acceptance, particularly when the petitioner after receiving the notice dated 09.05.2019 issued by the Civil Surgeon, Panipat, again refused to join the duties. At this stage, her presumption regarding sanctioning of leave ceased to exist and if she actually wanted to serve the department, it was an opportunity for her to re-join her services, but she chose to repeat her request for grant of extraordinary leave. This clearly establishes that her first preference was to pursue the post graduation course than to retain the job in hand. Therefore, it can be safely inferred that the petitioner willingly disengaged herself from the post of Medical Officer (HCMS-I).

Apart from the above, during the course of hearing, it is fairly conceded by the learned counsel that the petitioner was removed from service during her probation period and further the condition No.3 of her appointment letter also clearly mentioned that the services of the petitioner can be dispensed with during the probation period. The probation period provides time to the employer to analyze the performance of the newly recruited employee to assess the suitability before taking the decision of absorption of the said employee permanently in the job. It is settled law that if the employer finds the employee unsuitable for the job, the services of the said employee can be dispensed with without any issuance of notice or holding an enquiry. The petitioner accepted the said conditions with opened eyes and, therefore, she was well aware of the consequences of her long voluntary absence from service during the probation period.

Reference can be made upon the law laid by the Supreme Court of India in *Ajit Singh V. State of Punjab, 2003(3) S.C.T. 762 and Chaitanya Prakash & Anr. v. H. Omkarappa, 2010 (2) SCC 623*.

Thus, the above events leave no room for any doubt that the petitioner herself abandoned her services, thereby leaving no option for the employer but to remove her from services by relying upon the conditions of her appointment, and also by exercising the power under the relevant rules governing her services. This Court does not find any illegality in the order dated 06.11.2019 and resultantly, the writ petition is dismissed.

21.07.2020
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE