

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No. 1935 of 2021

Date of Decision: 01.03.2021

Dr. Chetan Goyal

....Petitioner

VERSUS

State of Punjab and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Sahil Khunger, Advocate for the petitioner.

Ms. Anju Arora, Addl. A.G., Punjab.

ALKA SARIN, J. (Oral)

Heard through video conferencing.

This is a civil writ petition under Articles 226 and 227 of the Constitution of India praying for issuance of a writ in the nature of certiorari or any other writ, direction or order quashing letter dated 31.12.2018 (Annexure P-6) and notice dated 23.12.2020 (Annexure P-12).

The brief facts relevant to the present case are that in 2003 the petitioner was selected by respondent no.2 to complete his PG Course from the Government Medical College, Patiala for the years 2003-06. In order to complete his Course, the petitioner had to execute a surety bond of Rs.5 lakhs and he was required to complete the bond period of five years commencing from August, 2006 to August, 2011. After completion of this Course in 2006, the petitioner served at the department and thereafter was transferred to Malerkotla. After joining his duties at Civil Hospital, Malerkotla on 14.09.2009, the petitioner proceeded on unsanctioned leave

on medical grounds attaching an alleged medical certificate. Thereafter, as per the averments made in the petition, since the petitioner was not allowed to join his duties and due to his own ailment, he sought voluntary retirement on 05.11.2009. However, Civil Surgeon, Sangrur vide letter dated 11.12.2009 recommended his termination of services due to his absence from duty from 15.09.2009. In 2011, the petitioner was charge-sheeted and on 02.04.2012 a departmental enquiry was initiated against him. Sh. K.C. Maini, IAS (Retd.) was appointed as Enquiry Officer. The enquiry was conducted on three charges : 1) un-authorized absence from duty on his own since 15.09.2009 and resorting to private practice; 2) disobedience of senior officer's orders; and 3) dereliction in the performance of his duty. The petitioner chose not to participate in the departmental proceedings and, despite being repeatedly sent registered letters, did not turn up. On the basis of evidence led by the department, the Enquiry Officer vide order dated 02.04.2012 held that the charges against the petitioner stood proved. Thereafter, the petitioner preferred an appeal to the Chief Secretary, Punjab (Annexure P-3). Vide order dated 05.06.2014 (Annexure P-4), the said appeal was dismissed. The petitioner chose not to challenge the order passed in appeal. Thereafter, the petitioner filed an un-dated review application which has been appended as Annexure P-5 with the petition. It is further the case set up by the petitioner that legal notices (Annexures P-8 to P-11) were sent regarding non-hearing of the review application. However, till date the said review application has not been heard. The petitioner was, thereafter, served notice dated 31.12.2018 (Annexure P-6) wherein it was stated that

since he has not completed the bond period of five years, it was mandatory for him to deposit the actual amount of Rs.5 lakhs. It is further stated that in case the said amount is not deposited, disciplinary action would be taken against him and it could even lead to suspension of his degree. The petitioner sent a reply (Annexure P-7) to the said notice regarding recovery of surety bond. The said notice was not challenged by the petitioner before any authority. Thereafter, the petitioner was served a notice dated 23.12.2020 (Annexure P-12) for recovery of amount of Rs.5,61,458/- with 8% interest. The petitioner has now approached this Court challenging the letter dated 31.12.2018 (Annexure P-6) and notice dated 23.12.2020 (Annexure P-12).

Learned counsel for the petitioner would contend that since the review application is pending against the order passed by the Appellate Authority, hence the recovery is illegal.

Learned State counsel on instructions from Sh. Jasbir Singh, Senior Assistant, O/o Director Health Services, Punjab has stated that there is no review application which is pending against the order passed by the Chief Secretary to Government of Punjab. It is further stated that even if there was any review filed, the said review was filed in the year 2014 and the petitioner is now approaching this Court in the year 2021 only for the reason that the Senior Medical Officer, who stood as surety for the petitioner, is about to retire and in case the said amount is not paid by the petitioner, the amount would be deducted from the retiral benefits of the said

SMO. It is further contended by learned State counsel that the petitioner has been carrying on his private practice since 2009 in the name of Goyal Health Care Hospital, Nabha.

I have heard learned counsel for the parties.

In the present case, the petitioner had done his PG Course and for which he was required to execute a surety bond to the tune of Rs.5 lakhs and was to complete the period of service from August 2006 to August 2011. The petitioner proceeded on unsanctioned leave on 14.09.2009 and thereafter, as alleged by the petitioner, since he was not allowed to join his duties, the petitioner applied for voluntary retirement from service on 05.11.2009. However, keeping in view the fact that the petitioner had absented himself from duty, the Civil Surgeon, Sangrur vide letter dated 11.12.2009 recommended the termination of services of the petitioner. The petitioner was charge-sheeted in the year 2011 and a departmental enquiry was initiated on 02.04.2012. The petitioner chose not to appear before the Enquiry Officer despite being sent repeated notices for appearance. Thereafter, the departmental proceedings were concluded and the charges were found to be proved against the petitioner. The petitioner chose to file an appeal against order dated 02.04.2012 (Annexure P-2) before the Appellate Authority which was also dismissed vide order dated 05.06.2014 (Annexure P-4). The petitioner further alleges that he had filed a review application though the said fact is denied by learned State counsel on instructions. Be that as it may, the fact remains that even if the averments

made by the petitioner are taken at their face value, the said review is alleged to have been filed in 2014. The petitioner alleges that he has been sending legal notices, however, he chose not to approach this Court and not to do anything about the alleged review application which has been pending. Further, pendency of the said review application by itself would not amount to stay of the order of departmental proceedings. The petitioner has now been served with a notice for recovery and as per learned State counsel the only reason that the petitioner has now chosen to approach this Court is that since the person, who stood surety for the petitioner, is about to retire and in case the surety amount of Rs.5 lakhs is not deposited by the petitioner, the said amount would be deducted from the retiral benefits of the said person (SMO).

The conduct of the petitioner in the present case is not aboveboard. He has taken the benefit which is granted to him and he was allowed to pursue his PG Course. He also executed a surety bond qua the same. However, later he did not comply with the period of service mentioned in the bond. Further the petitioner has been carrying on private practice during the period he was stated to be on leave.

Keeping all the above facts in view, I do not find any merit in the present petition and the same is hence dismissed.

(ALKA SARIN)
JUDGE

1st March, 2021
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO