

**CWP No. 21088 of 2016 (O&M)**

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

**CWP No. 21088 of 2016 (O&M)**

**Date of Decision: 18.11.2022**

Dr. Priya Gupta

.....Petitioner

Versus

State of Punjab and another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU**

Present: Mr. Puneet Jindal, Sr. Advocate with  
Mr. Gautam Goyal, Advocate,  
for the petitioner.

Mr. R.K. Kapoor, Additional Advocate General, Punjab  
for the respondent(s).

**MAHABIR SINGH SINDHU, J.**

Petitioner, who is residing in United States of America (for short 'US'), has filed present writ petition under Article 226 of the Constitution, through her father (General Power of Attorney) for quashing of the impugned order dated 11.11.2013, whereby she was dismissed from service, as well as the order dated 08.04.2015 vide which her appeal against the aforesaid order is rejected.

2. Paper-book reveals that petitioner joined her services as a Medical Officer with the Health Department, Punjab on 12.03.1999; while posted as such at Primary Health Centre (for short 'PHC'), Bhawanigarh, District Sangrur, she made a request dated 30.09.2009 (through proper channel) for grant of ex-India leave w.e.f. 12.10.2009 uptill 14.10.2010 to undergo IVF (In-Vitro Fertilization) procedure.

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Above request was forwarded in original to the office of Civil Surgeon, Sangrur by Senior Medical Officer (for short 'SMO'), Bhawanigarh vide letter dated 05.10.2009 for taking further necessary action.

Also noteworthy that subsequently, in support of her request, petitioner submitted an affidavit dated 07.10.2009 alongwith notarized copy of Passport as well.

The petitioner without waiting for final decision on the request by competent authority, proceeded US while leaving her departure report dated 10.10.2009 in the office of SMO, Bhawanigarh and the same was forwarded to the office of Civil Surgeon, Sangrur for further consideration vide letter dated 14.10.2009.

3. As neither request of petitioner had been accepted; nor she came back to join the duties, therefore, it resulted into issuance of the charge-sheet dated 08.03.2011 under Rule 8 of Punjab Civil Services (Punishment & Appeal) Rules, 1970 (for short 'the rules of 1970') for attracting major penalty.

4. The charge-sheet was sent to petitioner at her residential address in District Sangrur for soliciting reply, if any, within a period of 21 days. As no response was received from the petitioner, consequently, competent authority vide order dated 24.01.2012, appointed one Shri K.C. Maini, IAS (Retired) as an Inquiry Officer and intimation in this regard was sent to petitioner at her US address. The petitioner, instead of defending disciplinary proceedings, submitted her resignation vide letter dated 29.02.2012 and also requested to release her entire service benefits.

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5. The Inquiry Officer after taking into consideration the material available on record, submitted his report dated 29.03.2012, thereby proving all the charges levelled against the petitioner and copy thereof was sent to her vide letter dated 11.05.2012 at US address, thereby seeking written response, if any, within one month. Again instead of defending the charges, she simply reiterated her request for resignation vide letter dated 26.05.2012.

6. The Government of Punjab vide letter dated 21.05.2013, sought advice from Punjab Public Service Commission (for short 'PPSC') for dismissal of petitioner from service, and which was accorded vide communication dated 30.08.2013. Ultimately, after considering the matter, competent authority dismissed the petitioner from the post of Medical Officer.

7. Aggrieved against the dismissal order, petitioner preferred an appeal, but remained unsuccessful. Hence, present writ petition.

8. It is contended by learned Senior counsel for the petitioner that her request for ex-India leave was never rejected by the competent authority; thus, in such a scenario, dismissal on account of the alleged unauthorized absence is not legally sustainable. Further contended that petitioner was having ten years of regular satisfactory service to her credit, therefore, she had a lawful right to seek retirement on the basis of her request dated 29.02.2012, (reiterated on 26.05.2012) alongwith all service benefits, including proficiency step-up after completion of 4 years service. Also contended that once petitioner had submitted her resignation, then relationship of employer-employee came to an end; hence the impugned orders passed by both the authorities are vitiated in law.

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Again contended that documents relied upon during the enquiry proceedings as well as the advice rendered by PPSC were never supplied to the petitioner and as such a grave prejudice has been caused to her, thereby denying valuable right of defence. Still further contended that even the appellate authority while rejecting appeal of petitioner, did not record any reason; rather simply passed the non-speaking order; thus, the same is not legally tenable. Lastly contended that action of the respondents while dismissing the petitioner from the post of Medical Officer is violative of Article 14 & 16 of the Constitution and the same has resulted into complete negation of the principles of natural justice. Learned Senior counsel in support of his contentions relied upon following legal precedents:-

- (i) Dr. Vijay Khariwal versus State of Punjab 2013(4) S.C.T. 302;***
- (ii) S.N. Narula versus Union of India and others (2011) 4 SCC 591;***
- (iii) State Bank of India versus D.C. Aggarwal (1993) 1 SCC 13;***
- (iv) Director (Marketing) Indian Oil Corporation Ltd. And another versus Santosh Kumar (2006) 11 SCC 147;***
- (v) Mohar Singh versus State of Haryana 2019(2) SCT 69 and;***
- (vi) Arun Kumar Sharma versus GNCT of Delhi 2014(7) RCR (Civil) 1965.***

9. On the other hand, learned State counsel while opposing the prayer of petitioner, submitted that her request for ex-India leave was never accepted by the competent authority; but despite that she left for US without realizing the responsibilities towards poor patients of the area, knowing well that there was / is an acute shortage of doctors in the health department. Also submitted that vide letter dated 19.10.2009, petitioner was specifically directed that she should remain on duty until her ex-India leave is sanctioned

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by the competent authority, but she did not care about the orders of superiors; rather proceeded to US without there being any justification.

It was further submitted that charge-sheet was duly sent to the petitioner at residential address and she was apprised from time to time about the disciplinary proceedings at her local as well as US address disclosed in the application for seeking ex-India leave. Again submitted that petitioner being aware about the pendency of disciplinary proceedings, did not come forward to defend the charges; nor she joined her duties; thus, petitioner violated Government Employees (Conduct) Rules, 1966 (for short “the Conduct Rules”), thereby inviting dismissal from service.

Further submitted that regular departmental inquiry was conducted in the matter by a retired IAS officer and he found that all the charges levelled against the petitioner were duly proved. Apart that, an advice was sought from the PPSC prior to passing the dismissal order; thus the competent authority scrupulously followed procedure prescribed under the Rules of 1970.

Still further submitted that since there is no denial of allegations by the petitioner; nor any response was filed to the inquiry report, therefore, the appellate authority has rightly dismissed her appeal being devoid of any merit.

Lastly submitted that this Court while exercising jurisdiction under Article 226 of the Constitution should refrain from acting as an appellate authority as the scope of judicial review is extremely limited; hence no interference is required against the findings recorded by both the authorities.

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10. Heard learned counsel for the parties and perused the records.

11. Before proceeding further, it is necessary to recapitulate the charges levelled against the petitioner vide Memo. dated 08.03.2011 and the same read as under:-

*“Charges:*

- 1. Unauthorisedly absent from duty since 12.10.2009 on her own.*
- 2. Disobedience of the orders of her seniors.*
- 3. Infringement of discipline and creating impediments in the process of delivering of health care to the public.”*

It is evident from the record that above charge-sheet was sent to petitioner at her local address, and which is re-produced as under:-

*“Dr. Priya Gupta, Medical Officer, Merit No. 79/GC/98  
(Service No. 7712)  
D/o Shri Hem Raj Gupta, Advocate,  
Aggarwal Street, Street No.3,  
Club Road, Sangrur”*

Again relevant to mention here that in the present writ petition also, the same very address is mentioned by the petitioner in Memorandum of Parties and for reference, the same is extracted as under:-

*“Dr. Priya Gupta D/o Sh. Hansraj, Ex.-Medical  
Officer, Service No. 7712, Resident of Aggarwal  
Street, Street No.3, Club Road, Sangrur through  
General Power of Attorney Hem Raj Gupta.”*

12. Rule 8.15 of Punjab Civil Services Rules Volume-I Part-I, which deals with grant of leave and shall have bearing on the issue in hand, is also re-capitulated as under:-

**“Rule 8.15**

*Leave cannot be claimed as a matter of right. When the exigencies of the public services so require, direction to refuse or revoke leave of any description is reserved to the authority empowered to grant it.*

*The nature of leave due and applied for by a Government employee cannot be altered at the option of the sanctioning authority. So, while it is open to the sanctioning authority to refuse or revoke leave due and applied for under this rule it is not open to him to alter the nature of such leave.”*

Perusal of Rule 8.15 (*ibid*) makes it apparently clear that leave cannot be claimed as a matter of right; rather in the exigency of public service, revocation of leave already granted to an employee is reserved with the competent authority.

13. It is not in dispute that petitioner requested for ex-India leave from 12.10.2009 to 14.10.2010 (368 days) and the reasons disclosed for the purpose was as under:-

*“To undergo IVF(In-Vitro Fertilization) procedure”*

It is a matter of common knowledge that IVF is an assisted reproductive technology for infertile couple. Petitioner being a doctor was well aware that such medical facility was very much available in our country at least with the commencement of 21<sup>st</sup> Century; thus, by no stretch of imagination, it can be inferred that petitioner had been suffering from any life threatening disease at the relevant point of time or that her departure was inevitable before final decision by the competent authority.

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Moreover, there is no material available on record to suggest that petitioner was suffering from any medical emergency to leave the country for the purpose mentioned in her application without waiting final decision of her request.

14. It has also come on record that on an earlier occasion, petitioner was granted ex-India leave from 14.12.2006 to 14.01.2007; thus, she was fully aware about the procedure to be followed in such like case(s).

Perusal of entries made in her Passport clearly reveal that she was granted Visa (R B-1/B-2) by the US authorities on 16.05.2006, uptill 11.05.2016, i.e. for 10 years. Thus, it seems that petitioner while taking benefit of her long term Visa already granted, virtually abandoned the job of Medical Officer and the reason to undergo IVF treatment was merely a ploy to reach US.

15. Be that as it may, petitioner had never been granted ex-India leave by the competent authority for the period 12.10.2009 to 14.10.2010 and this fact was duly acknowledged by the petitioner vide her letter dated 29.02.2012 and for reference, the same is re-capitulated as under:-

*“To  
Principal Secretary Health  
Punjab Government, Chandigarh, India  
Subject: Resignation from service as PCMS-I  
Sir,*

*The applicant submits as under:-*

- 1. That I joined the service of Punjab State as PCMS-I in year 1999 after the selection by Punjab Public Service Commission at Patiala in 1998.*
- 2. That I applied for Ex-India leave from October 12, 2009 to October 14, 2010 while posted as Medical Officer at CHC,*

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*Bhawanigarh, District Sangrur, Punjab.*

3. *That the leave has not been sanctioned and I had even applied for extension of the leave from October 15<sup>th</sup>, 2010 to October 14<sup>th</sup>, 2011 and then from October 15<sup>th</sup>, 2011 to October 14<sup>th</sup>, 2012.*

4. *That I am not in a mood to continue my service as doctor as I have been charge sheeted unnecessarily by the Department and that too on flimsy grounds.*

5. *I hereby submit my resignation from service with immediate effect.*

6. *That the State of Punjab has revised the pay scale of employees w.e.f. January 01, 2006 and my pay must have been fixed in the revised scale. The arrears of the increments of my post graduation (M.S) have also not been paid in toto.*

7. *You are therefore requested to accept my resignation from the post of PCMS-I and pay the entire arrears besides the amount lying in my GPF account and oblige.*

*Thanking You,*

*Sincerely,*

*Sd/-*

*Dr. Priya Gupta (Merit No. 79/GC-98)*

*M.O., CHC Bhawanigarh, Punjab*

*Copies forward to:*

- 1. KC Saini, Retired IAS Officer,*
- 2. CMO Sangrur, Punjab.”*

Perusal of para-3 of the aforesaid letter clearly reveals that ex-India leave to the petitioner for the period in question were never sanctioned.

16. There is no quarrel that as per service rules applicable for the post in question, the Government of Punjab is competent authority for sanctioning ex-India leave. The petitioner was well aware about the procedure to be followed in the matter right from the office of SMO,

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Bhawanigarh, upto the level of competent authority; yet she submitted her departure report in the office of SMO on 10.10.2009 without waiting for final decision on the request.

Consistently, various reports of WHO as well as from Union Health Ministry indicate that there is an acute shortage of Doctors in our country, including State of Punjab; but petitioner did not realize the responsibilities for the reasons best known to her. Thus, the purpose depicted in the application dated 30.09.2009, does not seem to be convincing, rather farcical.

17. It deserves to be emphasized that prime object of the medical profession is to render service to the community; reward or self-gain is subordinate consideration for a doctor. Whosoever has chosen this noble profession, assumes the obligation to conduct himself in accordance with its ideals. A doctor should be fully dedicated for caring & healing the sick and to follow the professional obligation for achieving the principle objectives to serve the humanity.

18. Unfortunately, the petitioner, being a Medical Officer, in utter disregard of the office order, left for US without seeking any permission from the competent authority and she never turned up to fulfill her obligation in terms of Conduct Rules. For reference, Rule-3 of the Conduct Rules is extracted as under:-

***“Rule 3 - General (1) Every Government employee shall at all time-***

- (i) maintain absolute integrity;*
- (ii) maintain devotion to duty;*
- (iii) do nothing which is unbecoming of a*

*Government employee; and*

*(iv) intimate his latest permanent as well as temporary address to his appointing authority.”*

Perusal of Rule 3 (*ibid*) clearly reveals that every government employee shall maintain absolute devotion to duty and intimate the latest permanent as well as temporary address to the appointing authority.

19. Although, an attempt was made by learned Senior counsel while making reference to letter(s) dated 29.02.2012 & 26.05.2012 for seeking resignation by petitioner, but the same is not acceptable in view of the concept of relationship between employer-employee and reference in this regard can be made to the relevant part of para-6 of the Constitution Bench judgment in “***Roshan Lal Tandon Versus Union of India and another AIR 1967 SC 1889***, which reads as under:-

*“6. ....It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the*

*consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned.”*

*A fortiori*, to take care of such a situation, the Government of Punjab has taken policy decision vide Instructions No. 196-(GOI)-2SII-74/44174 dated 09.01.1975, which, *inter-alia*, read as under:-

*“4. In order to have a safeguard against possible evasion by employees of enquiry proceedings by the strategem of submission of resignation it necessary to observe the following policy:—*

*Where an enquiry or investigation, whether preliminary or regular, is pending against a Government employee (whether he has been placed under suspension or not) and he submits his resignation, such resignation should not normally be accepted until he is cleared of the charges.....”*

A perusal of aforesaid instructions clearly reveal that normally

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resignation in such cases should not be accepted by the competent authority until an employee is cleared of the charge(s).

Hence, the plea raised on behalf of petitioner that during pendency of disciplinary proceedings, her resignation / request for retirement ought to have been accepted by the competent authority, is rejected. At the same time, this Court will not hesitate to observe that in such type of lapse(s) by a Medical Officer, it is not only the department, rather society at large is also having an interest in running the health services.

20. Although, learned Senior counsel tried to raise the plea that documents relied upon by the Inquiry Officer as well as the advice of PPSC were not supplied to her at the relevant point of time, but the plea is not acceptable for the reason that petitioner did not choose to join the proceedings at any stage; nor she raised any defence against the charges despite repeated communications. Thus, in such a scenario, charges levelled against the petitioner were rightly held to be proved, resulting into dismissal from service by the punishing authority, duly concurred in appeal.

The argument raised by learned Senior Counsel that impugned orders passed by both the authorities are violative of Article 14 & 16 of the Constitution, is found to be without any substance in view of the fact that proper procedure prescribed under the Rules of 1970 was duly followed before passing the impugned dismissal order; thus, there is no element of violation of any constitutional provision(s) or principles of natural justice.

21. Even the legal precedents cited by learned Senior counsel are distinguishable and as such not helpful in view of the following discussion:-

(i) In ***Dr. Vijay Khariwal's as well as S.N. Narula's cases (supra)***,

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the punishment order was set-aside on the ground that the advice given by PPSC was not supplied to the petitioner. However in the present case, the advice as well as other material documents were very much brought to the notice of petitioner, but she did not come forward to defend the proceedings at any point of time.

(ii) In ***State Bank of India's (supra)***, material documents were not supplied to the petitioner, therefore, punishment order was quashed. However, in the present case, petitioner was served with charge-sheet. Reply was sought twice, but she did not file any response; rather requested to accept her resignation during pendency of disciplinary proceedings.

(iii) In ***Director (Marketing) Indian Oil Corporation Limited' case (supra)***, it was found that appellate authority did not apply its mind. However, in the present case, petitioner never defended the charges at relevant point of time and the appellate authority has passed an appropriate order.

(iv) ***Mohar Singh's case (supra)*** pertains to State of Haryana in which Punjab Government Instructions dated 09.01.1975 were not under consideration, therefore, the ratio of this case is also distinguishable.

(v) ***Arun Kumar Sharma's case*** lays down that a government servant cannot go out of country, without sanction of leave. There is no quarrel with the proposition of law laid down in this case, but it is not helpful to the petitioner in any manner.

22. In view of the above, it is held that mere submission of an application by the petitioner on 30.09.2009 for seeking ex-India leave was

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not a valid ground to proceed US without there being any sanction by the competent authority, to that effect.

23. Consequently, this Court does not find any ground to interfere with the findings and conclusion recorded by both the authorities while entertaining the present petition under Article 226 of the Constitution.

As a result thereof, there is no option except to dismiss the writ petition.

24. Ordered accordingly.

25. Copy of this order be sent to (i) the Secretary, Health & Family Welfare Department, Punjab; (ii) Additional Chief Secretary, Health Department, Haryana; and (iii) Secretary, Health Department, U.T., Chandigarh, for information and guidance in such like matters.

**November 18, 2022**

SN / dk kamra

**(MAHABIR SINGH SINDHU)  
JUDGE**

**Whether speaking/reasoned : Yes**

**Whether Reportable: Yes**