

06.05.2024
Court No.13
Item No.35
AP

WPA 377 of 2024

**Annesha Dutta
Vs.
The Union of India and Ors.**

Mr. Shiv Shankar Banerjee
Ms. Arijita Ghosh
Mr. Nilarnab Paul

... For the Petitioner.

Mr. Bishwambhar Jha
Ms. Rashmi Bothra

... For the Union of India.

Mr. Sukanta Chakraborty
Mr. Tirtha Pati Acharyya

... For the AIMS.

1. The petitioner is aggrieved by an order of termination dated 23rd June, 2023 passed by the Dean (Academics), AIIMS, Kalyani.

2. The brief facts are that by a letter dated 29th June, 2022 the petitioner was appointed as a Senior Resident Doctor in the department of Obstetrics & Gynecology at the All India Institute of Medical Sciences, Kalyani (hereinafter referred to as “the AIIMS, Kalyani”).

3. The appointment was for a period of 12 months against a consolidated monthly remuneration. She was allowed 2.5 days of leave per month and it was stipulated that the petitioner’s service may be terminated at any point of time with one month notice by either side. In the event of a shortfall in the period of notice, the competent authority would proportionately pay remuneration for the shortfall. The appointment was

to be regulated under Rule1(3) of the CCS (Temporary Service Rules) of 1965.

4. Sometime in and around 31st May, 2023, the petitioner and several doctors at the AIIMS, Kalyani were asked to report to Manipur to attend to emergency medical requirements thereat. Admittedly, there were serious civil disturbances in the State of Manipur at the relevant point of time. Upon reaching Manipur, the petitioner states that she was received and escorted to a place to serve a particular tribal community.

5. On the way to such place of work, the petitioner and another resident doctor were attacked by a mob of locals and there was an attempt to assault and/or kidnap the petitioner. She somehow managed to and escaped safe, from the clutches of the mob.

6. It appears from the records that the petitioner was to report to one I.N. Jamir in the State of Manipur and also coordinate with the AIIMS, Kalyani as regards her activity there.

7. The petitioner, however, for fear of her life asked one Dr. Kh. Shashikumar (DHS Manipur) and Dr. L.A. Singh (SRD-NHM) for immediate evacuation from Manipur to go back to Kalyani.

8. Admittedly, the petitioner was not able to report to I.N. Jamir. She also could not reach out to AIIMS,

Kalyani since the internet and mobile services had been suspended by the State administration.

9. When the Petitioner returned to Kalyani, she was issued a show cause, dated 4th June, 2023, to explain why strict disciplinary action should not be initiated against her. The petitioner replied to the same. Thereafter, the impugned order dated 23rd June, 2023 was passed, which is set out hereinbelow: -

“Sub: Termination of contract i.r.o. Dr. Annesha Dutta, Senior Resident, Dept. of Obs & Gyn., AIIMS, Kalyani

In compliance to the Govt. of India, MoHFW, North East Section, vide letter no. U-12025/19/2023-NE, dtd 30.05.2023, and subsequent approval of Competent Authority, Dr. Annesha Dutta, (who was appointed and working as Senior resident in Obs. & Gny.; Vide letter no. 3186/E-12015/7/23-(SR/T/JR), dated 07.02.2023) vide letter no 641/B-32013/5/22-(MIN.), dtd 31.05.2023 was deputed in the state of Manipur for providing health facilities with the direction to report Chief Secretary, Govt. of Manipur w.e.f. 31.05.2023.

2. However, Dr. Annesha Dutta deserted Manipur from the assigned responsibilities, in the time of crisis when her services were most required for the general public, without any knowledge of Competent Authority.

3. Act of Dr. Annesha Dutta calls for serious negligence and violation of Rule 3 (1) (i), (ii), (iii), (xix), (xxi) and Rule 3A of CCS (Conduct Rule) 1964.

4. Considering serious negligence and deviation from duties, the contract of Dr. Annesha Dutta, Senior Resident, Dept. of Obs & Gyn., AIIMS, Kalyani is hereby terminated with immediate effect.

5. This is issued with the approval of the Competent Authority.

Dr. Kalyan Goswami

**Dean (Academics)
AIIMS, Kalyani"**

10. Ex facie the Office Memorandum dated 4th June, 2023 and the order of termination dated 23rd June, 2023 cast the aspersion and stigma on the petitioner of serious negligence in duty and disciplinary action was also contemplated by the respondents.

11. The petitioner's contract was terminated alleging serious negligence and deviation from duties on her part. Such order being ex facie stigmatic, could not have been passed without a regular departmental enquiry.

12. This Court further notices that although the petitioner was appointed under Rule 1(3) of the CCS (Temporary Service Rules) of 1965, the letter of termination and show cause referred to in infraction of Rule 3(1) and 3A of the CCS (Conduct Rule) 1964.

13. It is now well settled that a stigmatic finding against the service of a contractual employee or even that of a probationer leading to termination cannot be arrived at without following the due process of law. Such stigma would leave a permanent mark on the career and character of the employee concerned. Such termination must be preceded by a regular departmental enquiry with due charges, recording of evidence and proper compliance of the principles of Natural Justice. No such enquiry appears to have been conducted in the instant case.

14. The law in this regard is well settled, inter alia, in the decision of ***Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology & Ors.*** reported in ***(2002) 5 SCC 111*** and the case of ***K. Raghupati Vs. The State of U.P. and Ors.*** reported in ***2022 (6) SCC 346***.

15. In these circumstances, this Court is of the view that the impugned show cause notice dated 4th June, 2023 and the letter of termination dated 23rd June, 2023 are ex facie illegal and shall stand quashed and set aside.

16. The petitioner's contractual service with the AIIMS, Kalyani shall be deemed to have come to an end without blemish, with effect from 23rd June, 2023. The petitioner shall be paid two months salary in lieu of the absence of sufficient notice of the letter of termination and the impropriety on the part of the respondents as indicated hereinabove.

17. There shall be no stigma attached to cessation of contract of the petitioner and the AIIMS, Kalyani. The petitioner shall be entitled to participate in any public or private recruitment.

18. Since, this Court has decided the writ petition purely on a question of law and the respondents have not been called upon to use any affidavits, none of the

allegations contained in the writ petition shall be deemed to have been admitted by them.

19. With the aforesaid directions, the writ petition is disposed of.

20. There shall be no order as to costs.

21. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)