

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 617 OF 2016 (S.B.)

Dr. Shivaji S/o Ishwarrao Nelge,
Age about : 53 years, Occ. Service, R/o Shri Siddhivinayak Apartment,
Siddheshwar Nagar, Kharbi Ring Road,
Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
Public Health Department,
Mantralaya, Mumbai-32.
Through its Secretary.
- 2) Director of Public Health Service,
Arogya Bhavan, Behind St. George Hospital,
Near CST Station, Fort,
Mumbai.
- 3) The Deputy Director of Public Health Services,
Mata Kacheri South Ambazari Road,
Nagpur.
- 4) Civil Surgeon, Civil Hospital,
Wardha.

Respondents

Shri S.M.Khan, the Id. Adv. for the applicant.

Shri P.N.Warjurkar, the Id. P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 26th day of March, 2018)

Heard Shri S.M.Khan, the learned counsel for the applicant and Shri P.N.Warjurkar, the learned P.O. for the respondents.

2. The applicant is a Medical Officer, Class-II and has been posted at Primary Health Centre, Talegaon (Tultule), Wardha. It is the grievance of the applicant that he was performing Family Planning Operation while he was at Latur and has registered his name under Indian Medicine Central Council Act, 1970 from August, 1997 to May, 2004 i.e. almost seven years he has performed Tubectomy operations. But he was not allowed to do such work and was refrained from performing such operations.

3. The applicant received a letter dated 23/03/2015 (Annexure-A-2), whereby it was intimated to him that he was absent from 23/02/2015 to 16/4/2015, and, therefore, it was decided to deduct his salary. It was also alleged that the applicant was not residing at his Head-Quarters and doing up and down from Nagpur and, therefore, the House Rent Allowance was also stopped. The Id. Counsel for the applicant submits that, the applicant is Class-II Officer and the Civil Surgeon, Wardha has no authority to deduct his salary and to stop his H.R.A. In fact the letter dated 23/03/2015 was intimation to the applicant regarding recommendation for disciplinary action against him.

However, the order is passed on 26/02/2015 as per (Annexure-A-6) at P.B. Pg. No. 19, whereby the Civil Surgeon intimated the applicant that his pay during his absence period and H.R.A. will not be drawn. The applicant, therefore, claims that the order dated 26/02/2015 be quashed and set aside. He is also claiming that the order dated 23/02/2015 whereby the Civil Surgeon has directed not to release the H.R.A., be quashed and set aside and hence this O.A.

4. The respondent no. 4 has filed the affidavit-in-reply. According to the respondent no. 4, the applicant was appointed temporarily at Rural Hospital, Selu as one of the Gynecologist was on leave vide order dated 20/02/2015. Due to flow of the patient at General Hospital, Wardha and in order to provide immediate medical services one Dr. Manisha Nasare working as Gynecologist at Selu was deputed to Wardha and in her absence the applicant was temporarily posted at Selu till Dr. Manisha Nasare rejoins her duty. The applicant, however, did not join and remained absent from 23/02/2015 to 16/04/2015. Vide letter dated 24/02/2015, the explanation was called from applicant which was not satisfactory and thereafter a show cause notice was also issued on 01/04/2017 asking him to explain as to why disciplinary action cannot be taken against the applicant. Due to non-cooperative behaviour of the applicant, one Dr. S.M.Bele working in Wardha, was temporarily posted at Rural Hospital, Selu. The applicant has not filed any application in

respect of his absence from duty. On the contrary, he submitted Medical Certificate on 06/04/2015 for the period from 22/02/2015 to 06/04/2015 and even on 07/04/2015 he did not join. Ultimately he joined on 16/04/2015 at General Hospital, Wardha. He did not submit any application for leave. The applicant thus remained absent for the period from 23/02/2015 to 16/04/2015, unauthorisely.

5. The applicant files rejoinder and submits that the action taken against him is against the principles of natural justice.

6. The Id. Counsel for the applicant submits that the respondent is not the appointing authority of the applicant, and, therefore, the impugned order directing denial of salary and H.R.A. to the applicant is illegal, since the respondent no. 4 has no authority at all. The Id. P.O., however, submits that the respondent no. 4 may not be appointing authority of the applicant but he is Drawing and Disbursing Authority, and, therefore, if the employee remain absent without intimation or unauthorizely, he has every right not to draw the salary till the decision as regards absent period is taken by the competent authority.

7. The Id. Counsel for the applicant submits that the impugned order dated 26/02/2015 and 23/03/2015 was passed without giving any opportunity to the applicant. The Id. P.O., however, invited my attention to the other documents on record, from which it seems that the action against the applicant was not taken all of a sudden. The Id. P.O.

further invited my attention to the order dated 20/02/2015 passed by respondent no. 4. In the said order, it was stated that the Gynecologist, Dr. Manisha Nasare was deputed at General Hospital, Wardha due to rush of the work and, till she was re-posted, the applicant was assigned the work at Selu. Admittedly, the applicant did not follow the order. The Id. P.O. also invited my attention to the notice dated 26/02/2015 (Annexure-A-6). In the said letter, it was specifically mentioned that the applicant did not join at Selu and, therefore, his payment will not be drawn, as he did not join and was absent from duty unauthorisedly. The Id. P.O. referred to show cause notice at Pg. No. 14 (Annexure-A-3) dated 01/04/2015, whereby it was intimated to the applicant that inspite repeated chances, he was not obeying the order nor attending the duty and on the contrary, behaving adamantly and, therefore, it was intimated that the departmental inquiry will be proposed against him to the higher authorities on these charges mentioned in the said notices. The Id. P.O. thereafter placed reliance on the medical certificate produced by the applicant alongwith a letter dated 06/04/2015. The said medical certificate shows that the applicant was not medically fit and still he is making allegations that he was not allowed to join.

8. From all these correspondence, it seems that time and again, the applicant was given an opportunity and was directed to join his duty at Selu. It seems that because of the administrative difficulties, the

Gynecologist at Selu was posted for some days at General Hospital, Wardha in order to cope up with the flow of the patients and in her absence, the applicant was deputed temporarily. The applicant, however, instead of joining at Selu deliberately avoided to join and, therefore, being a Drawing and Disbursing authority, the respondent no. 4 seems to have taken a decision not to draw his salary and H.R.A. This action cannot said to be a punishment and it was subject to departmental inquiry, to be initiated against the applicant. The respondent no. 4 has also intimated the applicant that he was proposing departmental action against the applicant for his misconduct. Considering all these aspects, I absolutely find no illegality in the action taken against the applicant by respondent no. 4 in not paying salary and H.R.A. to the applicant and recommending departmental action against him. The Id. Counsel for the applicant himself has placed on record one G.R. dated 28/02/2011, issued by Government of Maharashtra which is regarding making availability of the Medical Services in emergency. The Id. Counsel for the applicant has placed reliance on Clause (v) of the said G.R., which reads as under :-

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vf/Adk&; k; k tklrhr tkLr rki gR; k Lo: i kr l kr fnol ki ; r l ok mi yC/A d: u
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9. The Id. Counsel for the applicant submits that the Civil Surgeon has no authority to depute the applicant for more than seven days in case of emergency. I feel that the applicant's counsel has misinterpreted the said G.R. The said G.R. clearly shows that in case of emergency, Civil Surgeon can depute any Medical Officer at any place in the district. The applicant was deputed in case of emergency. Since there was no Medical Officer available at Wardha and whatever officers available were not sufficient and, therefore, in order to cope up with the emergency, the Gynecologist at Selu was deputed at Wardha and in her place the applicant was deputed for the time being.

10. The Id. Counsel for the applicant further submits that the applicant was Medical Officer and was not Gynecologist and, therefore, his deputation as a Gynecologist was illegal. It is material to note that the applicant in his O.A. in para no. 3, itself has stated that he has performed huge number of Tubectomy operations for a period of seven years from August, 1997 to May, 2004. It was his grievance that inspite of qualification and experience in performing Family Planning Operations, he was denied the work. Now, the applicant is taking a somersault saying that he was not a Gynecologist. This shows that the attitude of the

applicant is nothing but to avoid his duty assigned to him. The application, therefore, seems to be have been filed with malafide intention.

11. On the conspectus of discussion in foregoing paras, I am, therefore, satisfied that there is no merit in the application. On the contrary, the same has been filed without bonafides. Hence, the following order:-

ORDER

The O.A. stands dismissed with cost of Rs. 1000/-.

Dated :- 26/03/2018

aps

**(J.D. Kulkarni)
Vice-Chairman (J).**