

## **Dr. Avtar Singh vs Medical Superintendent, Rajindra ... on 17 February, 1983**

**Equivalent citations: (1983)ILLJ363SC, 1983(1)SCALE177, (1983)2SCC298, 1983(1)SLJ363(SC), AIRONLINE 1983 SC 1, 1983 SCC (L&S) 283, (1983) 2 LAB LN 342, 1983 (2) SCC 298**

**Bench: A.N.Sen, D.A. Desai**

### **JUDGMENT**

Desai, J.

1. Dr. Avtar Singh is the appellant in both the appeals. State of Punjab is the respondent in both the appeals, but in C.A. No. J 560/82, the Medical Superintendent, Rajindra Hospital, the Principal, Government Medical College and the Director, Research and Medical Education, Punjab are other respondents.

2. The issues in both the appeals are to some extent inter-related and therefore, they were heard together and are being disposed of by this common Judgment.

Re; C.A. No. 1560/82

3. Appellant passed M.B.B.S. examination in 1979 and then spent one year as an intern in Rajindra Hospital, Patiala. At the end of the period of internship, he was selected as House Surgeon in Surgery in the same hospital and completed one term of six months ending with June 30, 1981. On his application, he was selected for a term as House Physician. During the period he was working as House Physician, the Medical Superintendent, Rajindra Hospital served a notice dated August 14, 1981 calling upon the appellant to show cause why his service should not be terminated because his work and conduct were found not satisfactory. Thereafter the Medical Superintendent, Rajindra Hospital by his order dated September 21, 1981 discharged the appellant from service as House Physician on the ground that his conduct has been found unsatisfactory and his service was terminated with immediate effect. Appellant preferred an appeal to the fourth respondent The Director Research & Medical Education, Punjab against the order terminating his service which was rejected as per the order dated November 17, 1981. Appellant filed a writ petition in the High Court of Punjab and Haryana at Chandigarh. The High Court relying upon Rule 13-A of the relevant Rules held that the petitioner could be discharged from the post of House Physician without assigning any reason, if the conduct of the person is found to be unsatisfactory. The High Court accordingly dismissed the writ petition. Hence this appeal by special leave.

4. The appellant while he was serving as House Physician in Rajindra Hospital, Patiala applied for the post of Medical Officer in Punjab Civil Medical Service Class II. The respondent State by its order dated July 28, 1981 appointed the appellant as Medical Officer in a purely temporary post but which was likely to continue indefinitely. The appointment inter alia was subject to the condition that the character and antecedents of the appellant were satisfactory and if either of them was found to be unsatisfactory, his service was liable to be terminated forthwith. When the order of appointment was received by the appellant, he was still holding the post of House Physician and his term was to expire by the end of the year 1981. Accordingly, the appellant moved the State Government to grant him extension in time for joining the post to which he was appointed and by the order dated August 19, 1981, the time for joining the post was extended upto December 31, 1981. The misfortune overtook the appellant because his service as House Physician was terminated with the result that he could not produce the character certificate. On the contrary the State Government was informed about the termination of service of the appellant as House Physician on the ground of unsatisfactory conduct which led the respondent State to pass the impugned order dated December 17, 1981 whereby the offer of appointment made to the appellant was cancelled. The appellant questioned the validity and legality of this order of cancelling the appointment in Writ Petition No. 5799/81 in the High Court of Punjab and Haryana at Chandigarh. The High Court was of the opinion that the cancellation of the appointment was in consonance with the terms of the appointment and therefore, the appellant cannot make any grievance about the cancellation of the appointment. The High Court accordingly dismissed the writ petition. Hence this appeal by special leave.

5. In the course of the hearing of these two appeals, we asked Mr. D.D. Sharma, learned Counsel for the State of Punjab as to what was objectionable in the conduct of the appellant? Amongst other things, Mr. Sharma pointed out that in reply to the notice served by the Medical Superintendent, Rajindra Hospital calling upon the appellant to show cause why his service should not be terminated on the ground that his work and conduct were not satisfactory, the appellant refuted the allegation by stating that the imputations were false and the language of the reply to the show cause notice was unbecoming of a Medical Officer. If this was all the grievance, we feel that the career of a qualified Doctor should not be stigmatised at the threshold. But before we resolve the dispute, let us look at the manner in which the situation has been dealt with by the respondent.

6. It is not in dispute that the appellant passed his final M.B.B.S. examination and completed one year of internship in this very Rajindra Hospital at Patiala. Therefore, his conduct and work must have been observed during the period of internship. Thereafter the appellant applied for and was selected for the post of House Surgeon for one term commencing from January 1, 1981 and ending with June 30, 1981. There is not the slightest suggestion that even during the period of six months, there was any dereliction in performing duty. And this could be vouchsafed from the fact that the appellant applied for and was appointed for second term commencing from July 1, 1981 and ending with December 31, 1981 for the post of House Physician. In other words, the appellant was in Rajindra Hospital continuously for a period of one year and nine months, and till the show cause notice was issued, there was no whisper about his conduct being not upto the mark or there is any slackness in his work.

7. It appears that at some point of time, there was some agitation by the nursing staff and a suspicion was entertained that the appellant had instigated student nurses as well as medical students ever since the unfortunate incident dated August 4, 1981. This becomes clear from the copy of the letter dated 13/14 August, 1981 by the Prof, of Medicine in Government Medical College, Patiala to which Rajindra Hospital is attached as a teaching hospital to the Medical Superintendent, Rajindra Hospital. In this report it is alleged that the appellant had a tendency to be unpunctual and that to the best of the knowledge of the Professor of Medicine, the author of the report, the appellant was taking active part in instigating nursing students and the medical students because he was frequently sighted along with the agitating students. It was further alleged that the appellant does not take sufficient interest in his work which is of poor quality. Now it may be recalled that the appellant was in this very hospital from the commencement of the term in 1980 and he was working as House Surgeon from January 1981, and as House Physician since July 1981 and during this period this is the only allegation against the appellant. It is nowhere suggested that on earlier occasion there was any dereliction of duty by the appellant or his work was unsatisfactory. The very fact that he applied for the post of House Physician in the second term and the fact that he was selected and appointed by these very authorities i.e. the Superintendent and Professor of Medicine attached to the hospital would certainly show that the conduct of the appellant was good and his work was satisfactory. Assuming that the report of Professor of Medicine is one on which action ought to be taken on the very day the report was received, the show cause notice dated August 14, 1981 was issued. But appellant replied to the notice denying the allegations. Thereafter, the service as House Physician was terminated. It is not the case of anyone that an enquiry was held or that the appellant was given an opportunity to face the enquiry or to lead his defence or refute the charges against him or to ascertain the evidence against him. Action is taken on an ex parte report of Professor of Medicine. Is it fair treatment? But in this connection Mr Sharma learned Counsel of the State pointed out that the criteria laid down by the Punjab Government Memo No. 17642-IHBI-72/dated December 1, 1971 for regulating the selections of House Surgeons/ House Physicians for appointment to the teaching Hospitals attached to the Medical Colleges in the State of Punjab would permit termination of service without any formal enquiry. Reliance was placed on para 13 A of the criteria which provided that in case the work and conduct of a House Surgeon/House Physician is found unsatisfactory he is liable to be discharged from the house job without assigning any reason.' In the copy of the criteria given to the Court, we did not find para 13A. May be it was introduced later on and we proceed on the assumption that it was in force at the relevant time.

8. The question which we have been required to examine is whether a house job in Government hospital is a civil post and whether discharge from the post on the ground of unsatisfactory work or conduct would attach a stigma to the concerned person and whether such civil consequences would flow from the stigma which would necessitate principles of natural justice being observed before discharging the man from service, which to say the least would amount to removal from service?

9. We do not propose to examine this serious contention in this case because we asked learned Counsel appearing on behalf of the appellant whether the offence which the appellant is alleged to have been caused to the respondent can be retrieved by showing some remorse though the remorse is not required to be expressed in any particular form which may permanently be held out against a

budding Doctor at the threshold of his career as a permanent stigma to be suffered throughout his life. Therefore, the learned Counsel for the appellant stated that the appellant unconditionally withdraws all the averments that he has made in reply to the show cause notice and if the language used by the appellant has offended anyone, it was never made to hurt " anyone, but at best it was an attempt of a young man at the threshold of his career to defend and save his character. The learned Counsel unconditionally withdrew all the averments made in reply to the show cause notice. In our opinion, that is sufficient remorse and the chapter must end there.

10. Now the question is what relief can be given to the appellant in the first appeal? The appellant was appointed as a House Physician for a term of six months commencing from July 1, 1981 and ending with December 31, 1981. Even though he was appointed as Medical Officer in P.C.M.S. Class II in August 1981, he had to request for extension of time for joining the new appointment till December 31, 1981 which would mean that on that date his term as House Physician would expire and he can conveniently join the post of Medical Officer. It may be mentioned that extension requested for was granted. In the meantime this unfortunate event occurred which denied the appellant an opportunity to produce his character certificate and which led to the cancellation of his appointment. Now as far as the first appeal is concerned, the appellant has challenged the validity of the order terminating his house job. Even if that order is set aside, the appellant cannot join his house job as his term has expired. Therefore, no relief can be given in the first appeal save and except that this stigma on his career arising from termination of his service would stand removed.

11. But this approach would help us in giving some relief to the appellant in the second appeal. In the second appeal, the appointment of the appellant is cancelled on the short ground that not only he has not been able to produce the character certificate but on the contrary there is an adverse report against his character having a reflection on his antecedents. Now once the first unhappy chapter is treated as closed, there is no reason why the respondent should not issue the necessary character certificate. It may be pointed out that from July 7, 1982 to January 6, 1983, the appellant has worked as resident House Surgeon attached to the Department of Surgery in the General Hospital at Chandigarh. The Medical Superintendent of the General Hospital has issued a certificate saying that the work of the appellant during the aforementioned period was good and his character/conduct was satisfactory. This assures us that there is nothing improper or unbecoming in the character and conduct of the appellant save and except the unfortunate belief of the Professor of Medicine which led to the termination of the house job. We are therefore, of the opinion that the authority of Rajindra Hospital must issue a certificate about the character and conduct of the appellant ignoring the unfortunate incident leading to the termination of service as house Physician of the appellant on September 21, 1981. Once that certificate is issued, obviously, the order cancelling the appointment of the appellant must fall because that was the only ground on which the order of appointment was cancelled.

12. We accordingly allow both the appeals. Respondent No's. 1 The Medical Superintendent, Rajindra Hospital, Patiala in the first appeal is directed to issue a certificate about the character and conduct of the appellant ignoring the report of the Professor of Medicine and the termination of service of the appellant as House Physician. On this certificate being issued and sent to the relevant authority within two weeks from today, and if it is found satisfactory as meeting the requirement of

respondentState, the order of the respondentState of Punjab dated December 17, 1981 is quashed and set aside which would revive the order of appointment of the appellant as Medical Officer in P.C.M.S. Class II. We order accordingly with no order as to costs.