

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 86 of 2024

Priyanka Kumari Singh, Age about 38 years, W/o Sri Vikrant Kumar, R/o. Old Gas Godown, Ratu Road, Ranchi, P.O.-Hehal, P.S. Sukhdeonagar, District-Ranchi (Jharkhand).

....Petitioner

Versus

1. State of Jharkhand through the Principal Secretary, Health Medical Education and Family Welfare Department, Government of Jharkhand, having its office at Project Bhawan, Dhurwa Ranchi, P.O. & P.S. Dhurwa, District Ranchi;
2. The Joint Secretary, Health Medical Education and Family Welfare Department, Government of Jharkhand, having its office at Project Bhawan, Dhurwa Ranchi, P.O. & P.S. Dhurwa, District Ranchi;
3. Regional Deputy Director, Health Service, Government of Jharkhand, South Chhotanagpur Division, Ranchi having its office at Health Directorate, Namkum, P.O. & P.S. Namkum, District Ranchi;
4. Project Director, National Health Mission, Government of Jharkhand, having its office at Health Directorate, Namkum, P.O. & P.S. Namkum, District Ranchi;
5. Civil Surgeon-cum-Chief Medical Officer, Ranchi having its office at Sadar Hospital Campus, Main Road, Ranchi, P.O.- GPO, P.S. Kotwali, District Ranchi;
6. Medical officer incharge, Community Health Center, Kanke, P.O. & P.S. Kanke, District Ranchi.

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Mr. Saurav Arun, Adv.
Ms. Sharon Kerketta, Adv.
Ms. Ayushi, Adv.
Mr. Bhanu Kumar No.1, Adv.
For the Resp.-State : Mr. Manav Poddar, A.C. to A.A.G.-I

06/Dated: 06.09.2024

Heard learned counsels for the parties.

- 2.** The instant writ application has been preferred by the petitioner praying therein for quashing and setting aside the office order No.9/RCH-537/2023-617(MD) dated 15.12.2023 (Annexure-

10) issued by the respondent No.4 and its follow up office order issued under memo No.2172 dated 20.12.2023 (Annexure-10/A) issued by the office of respondent No.5; whereby the petitioner was terminated and removed with immediate effect.

3. At the outset, learned counsel for the petitioner draws attention of this Court towards the impugned order which is at page-44 (Annexure-10) and submits that this order is stigmatic in nature and now, the law is well settled that any order which is stigmatic in nature then the normal principle of natural justice with regard to the proper enquiry, asking for a reply is necessary, which is absent in the instant case.

He contended that the impugned order of termination clearly transpires that there is a complete non-application of mind and no reason has been assigned and the reply filed by the petitioner has not at all been discussed. He further relied upon the judgment passed in the case of **Dr. Vijayakumaran C.P.V. v. Central University of Kerala & Ors.** reported in **(2020) 12 SCC 426**, wherein the Hon'ble Apex Court has held that a full-fledged enquiry is required even if a contractual employee is terminated if the order of termination is stigmatic in nature. He further referred to the order passed in the case of **Neelam Kumari v. The State of Jharkhand (W.P.(S) No.3924 of 2023)** and submits that in similar matter this Court has quashed and set aside the order of termination and the respondents were directed to reinstate the petitioner, however, a liberty was given to the respondents in that case that they may proceed with a fresh enquiry after following principles of natural justice.

4. Learned counsel for the petitioner further submits that when the petitioner was not provided the copy of enquiry report, which was the basis of her termination in which she was not even called for, she asked for the copy under the R.T.I. Act and the concerned authority has provided the said report in which the petitioner was exonerated; as such, even otherwise; the order of termination should be quashed and set aside.

5. Learned counsel for the respondent-State fairly admits that the order passed in the case of ***Neelam Kumari (supra)*** is squarely applicable in the instant case; accordingly, similar order may be passed in this case in the line of the aforesaid order.

6. Having heard learned counsels for the parties and after going through the documents available on record and also the order passed in the case of ***Neelam Kumari* (supra)**, it appears that in the said case also the order of removal was stigmatic in nature and this court after dealing several judgments have passed following orders:

“6. Having regard to the aforesaid facts and circumstances and after going through the impugned letter, it is evident that there is a complete non-application of mind in passing the impugned order of termination by the disciplinary authority, inasmuch as, the grounds taken by the petitioner in reply to the show-cause notice has not at all been considered.

It is also relevant to indicate that the ground of lapse of agreement which has been taken in the counter affidavit cannot be accepted by this Court in view of the settled proposition laid down in **“ABL International v. Export Credit Guarantee Corporation of India”** reported in (2004) 3 SCC 553 wherein it has been held that the State should act fairly.

7. In the instant case, after perusing the impugned order of termination, I don't have any hesitation in holding that the impugned order is stigmatic in nature. Thus, a full-fledged enquiry was necessary. However, from record it appears that neither any full-fledged enquiry took place nor grounds for defence of the petitioner have been considered by the respondents. In this regard a reference may be taken from the case of **“Dr. Vijayakumaran C.P.V”** (supra) wherein the Hon'ble Apex Court at paragraph nos. 10 to 14 held as under:

“10. In Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences [Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences, (2002) 1 SCC 520 : 2002 SCC (L&S) 170], the Court observed thus: (SCC p. 528, para 21)

“21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld.”

11. In the present case, all the three elements are attracted, as a result of which it must follow that the stated order is *ex facie* stigmatic and punitive. Such an order could be issued only after subjecting the incumbent to a regular inquiry as per the service rules. As a matter of fact, the Internal Complaints Committee had recommended to proceed against the appellant appropriately but the Executive Council proceeded under the mistaken belief that in terms of Clause 7 of the contract, it was open to the Executive Council to terminate the services of the appellant without a formal regular inquiry as per the service rules. Indisputably, in the present case, the Internal Complaints Committee was constituted in reference to the complaints received from the girl students about the alleged misconduct committed by the appellant, which allegations were duly inquired into in a formal inquiry after giving opportunity to the appellant and culminated with the report recording finding against the appellant with recommendation to proceed against him.

12. Upon receipt of complaints from aggrieved women (girl students of the University) about the sexual harassment at workplace (in this case, University campus), it was obligatory on the Administration to refer such complaints to the Internal Committee or the Local Committee, within the stipulated time period as predicated in Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short “the 2013 Act”). Upon receipt of such complaint, an inquiry is required to be undertaken by the Internal Committee or the Local Committee in conformity with the stipulations in Section 11 of the 2013 Act. The procedure for conducting such inquiry has also been amplified in the 2015 Regulations. Thus understood, it necessarily follows that the inquiry is a formal inquiry required to be undertaken in terms of the 2015 Regulations. The allegations to be inquired into by such Committee being of “sexual harassment” defined in Section 2(n) read with Section 3 of the 2013 Act and being a serious matter bordering on criminality, it would certainly not be advisable to confer the benefit on such employee by merely passing a simple order of termination. Such complaints ought to be taken to its logical end by not only initiating departmental or regular inquiry as per the service rules, but also followed by the other actions as per law. In such cases, a regular inquiry or departmental action as per service rules is also indispensable so as to enable the employee concerned to vindicate his position and establish his innocence. We say no more.

13. *A priori, we have no hesitation in concluding that the impugned termination order dated 30-11-2017 is illegal being ex facie stigmatic as it has been issued without subjecting the appellant to a regular inquiry as per the service rules. On this conclusion, the appellant would stand reinstated, but whether he should be granted back wages and other benefits including placing him under suspension and proceeding against him by way of departmental or regular inquiry as per the service rules, is, in our opinion, a matter to be taken forward by the authority concerned in accordance with law.* We do not intend to issue any direction in that regard keeping in mind the principle underlying the exposition of the Constitution Bench in ECIL v. B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184]. In that case, the Court was called upon to decide as to what should be the incidental order to be passed by the Court in case after following necessary procedure, the Court/Tribunal was to set aside the order of punishment. The Court observed thus: (SCC p. 758, para 31)

“31. ... Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.”

(emphasis supplied)

Following the principle underlying the abovequoted exposition, we proceed to hold that even though the impugned order of termination dated 30-11-2017 is set aside in terms of this judgment, as a result of which the appellant would stand reinstated, but at the same time, due to flawed approach of Respondent 1 University, the entitlement to grant back wages is a matter which will be subject to the outcome of further action to be taken by the University as per the service rules and in accordance with law.

14. Accordingly, this appeal partly succeeds. We set aside the impugned judgments and orders dated 30-1-2018 [Vijayakumaran C.P.V. v. Central University of Kerala, 2018 SCC OnLine Ker 22418] and 20-2-2018 [Vijayakumaran C.P.V. v. Central University of Kerala, 2018 SCC OnLine Ker 22417] passed by the High Court including the order of termination dated 30- 11-2017 issued under the signatures of the Vice-Chancellor of Respondent 1 University; and instead direct reinstatement of the appellant and leave the question regarding back wages, placing him under suspension and initiating departmental or regular inquiry as per the service rules, to be taken forward by the authority concerned in accordance with law.

Emphasis Supplied

8. As stated hereinabove, the order of termination is stigmatic in nature; as such, the impugned order requires interference on this score alone.

The petitioner has also claimed the ground of parity and referred to in paragraph no. 3 of the supplementary affidavit and submits that in the Garhwa district fourteen persons working on contract basis were terminated from service on certain charges but they have been reinstated vide order dated 02.03.2023 and petitioner is similarly situated with those employees; as such she may also be reinstated. This averment has not been denied by the respondents either in reply to the supplementary affidavit or during course of argument.

It is not out of place to indicate here that the petitioner was appointed in the year 2006 by way of an agreement and continued till the year 2022; as such, the ground taken in the counter affidavit does not have any legs to stand in the eye of law because the respondents themselves continued the petitioner in the service.

9. Having regard to the aforesaid discussions, the impugned letter of termination dated 18.11.2022, is hereby, quashed and set aside. The respondents are directed to reinstate the petitioner as early as possible but not beyond the period of one week from the date of receipt/production of copy of this order.

However, the respondents would be at liberty to initiate a fullfledged enquiry in the light of the judgment passed in "Dr. Vijayakumaran C.P.V" (supra) and pass an appropriate order after following the principle of natural justice."

7. Since both the counsels fairly submitted before this Court that the instant case may be disposed of in the line of the order passed in the case of ***Neelam Kumari*** (supra); accordingly, the instant writ application, is hereby, disposed of by quashing and setting aside the impugned order dated 15.12.2023 (Annexure-10) and the letter of communication dated 20.12.2023 (Annexure-10/A).

The respondents are directed to reinstate the petitioner as early as possible, but not beyond a period of two weeks from the date of receipt/production of copy of this order.

However, the respondents would be at liberty to initiate a full-fledged enquiry in the light of the judgment passed in the case of ***Dr. Vijayakumaran C.P.V.*** (supra) and pass an appropriate order after following principles of natural justice.

8. Accordingly, the instant writ application stands allowed.

(Deepak Roshan, J.)

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