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(2009) 06 JH CK 0004

Jharkhand High Court

Case No: None

Dr. Amreshwer Prashad	APPELLANT
Vs	
The State of Jharkhand and Others	RESPONDENT

Date of Decision: June 26, 2009

Hon'ble Judges: Dhirubhai Naranbhai Patel, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D.N. Patel, J.
The present petition has been preferred mainly for the reason that the present petitioner has been suspended vide order dated 31th February, 2009 passed by respondent No. 5 (Annexure 12 to the memo of present petition). Government constituted an Inquiry Committee whereby a report has been given that there are irregularities in selection as well as appointment of Medical Officers in the Department of Ayush and letter has also been issued by Secretary, Health Department dated 22nd January, 2009 (Annexure 9 to the memo of the petition) whereby it has been stated that without taking prior approval for issuance of appointment letters, the concerned Medical Officers have been appointed in the Department of Ayush and, therefore, the petitioner is suspended pending inquiry vide order dated 31th February, 2009, which is under challenge.

2. I have heard learned Counsel for the petitioner, who has submitted that the only role played by the present petitioner is that he is the chairman of the Selection Committee for the appointment of Medical Officers in the Department of Ayush. The petitioner has only recommended the names of the Medical Officers for the appointments and the actual appointment is being done by the Secretary of the concerned department of the Government. Petitioner has nothing to do with the appointments of the Medical. Officers in the Department of Ayush and, therefore, the suspension Order passed by respondent No. 5 deserves to be quashed and set aside. It is also submitted by learned Counsel for

the petitioner that the suspension order passed by respondent No. 5 dated 13th February, 2009 at Annexure 12 to the memo of the petition is not based upon the true and correct facts, therefore, also the suspension order passed by respondent No. 5 deserves to be quashed and set aside. It is also submitted by learned Counsel for the petitioner that after recommendation of the names of the Medical Officers/successful candidates, necessary approvals have been given by all the hierarchies at the secretariat level/Government level. Counsel for the petitioner has taken this Court to the nothing of the file as revealed from Annexure 5 to the memo of the present petition and pointed out that selections of the Medical Officers in the Department of Ayush have been approved by the Secretary i.e. by respondent Nos. 3 and 4 as well as by concerned Minister of the State of Jharkhand. It is also submitted by learned Counsel for the petitioner that all the names of the successful candidates were sent to the Government in one lot by the petitioner, but, the respondents have bifurcated the names into parts/phases. So far as phase one is concerned, there are no allegations by the Government upon anybody and they have appointed some candidates as Medical Officers in the Department of Ayush. So far as second phase is concerned, allegations are levelled against the petitioner is that in selection as well as in appointments, there are some irregularities committed by the present petitioner, as per report of the Inquiry Committee and, therefore, petitioner is suspended vide order dated 13th February, 2009. It is also submitted by learned Counsel for the petitioner that even the second lot of the appointment of Medical Officers was also approved by the concerned Secretary as well as by the concerned Minister. Petitioner has never issued any appointment letter to any Medical Officer. Petitioner is a mere recommendatory authority, who has nothing to do with the appointment or who has nothing to do with the issuance of the appointment letters and, therefore, the suspension order passed by respondent No. 5 at Annexure 12 deserves to be quashed and set aside. Learned Counsel for the petitioner has taken this Court to several paragraphs of .the memo of the petition especially paragraphs 17, 22, 23, 24 and 25 and the reply given by the Chief Secretary of the State of Jharkhand in his affidavit in paragraphs 31, 36 and 37 and submitted that a false affidavit has been filed, ay the Chief Secretary of the State. Likewise, Counsel for the petitioner has also taken this Court to the affidavit filed by respondent No. 3 and pointed out that several incorrect statements have been made by respondent No. 3 in his affidavit. It is also submitted by learned Counsel for the petitioner that the reasons given for the suspension in order at Annexure 12 is based upon no fact on record and, therefore, the same deserves to be quashed and set aside. Petitioner is ready and willing to co-operate the departmental inquiry.

3. I have heard learned Advocate General on behalf of the respondents, who has submitted that there are several irregularities and illegalities committed by the present petitioner and, therefore, the State of Jharkhand has appointed an Inquiry Committee, who has given its report and as per the report of the Inquiry Committee, which was of the nature of preliminary inquiry and its report reflects the irregularities committed by the petitioner. This fact has been reflected in the order of suspension passed by respondent No. 5 dated 13th February, 2009 and, therefore, for conducting departmental inquiry, the

present petitioner has been suspended. Petitioner being an influencing officer and if he continues on the post, he may affect or he may tamper with the evidences and, therefore for holding neutral inquiry, the petitioner has been suspended. It is also submitted by learned Advocate General of the State that Inquiry Committee"s report is at Annexure D to the counter affidavit filed by the Chief Secretary of the State. It is also submitted by learned Advocate General that charge sheet has also been issued which is at Annexure J to the counter affidavit filed by the Chief Secretary and as per the charge sheet, there are more than one dozen allegations or charges against the present petitioner which includes that Under Secretary of the State of Jharkhand was kidnapped by the present petitioner and others, and under threat and coercion, his signatures were taken on the file of the Government and without taking prior approval of the Secretary of the concerned department, hurriedly appointment letters were issued. Learned Advocate General has taken this Court to Annexure F to the counter affidavit filed by the Chief Secretary, which is a letter of the Under Secretary of the State of Jharkhand. It is also submitted by learned Advocate General that looking to the order at Annexure 12, which is a suspension order of the petitioner during pendency of the inquiry, it has been stated by respondent No. 5 that there are irregularities committed by the present petitioner in the selection as well as appointment of the Medical Officers in the Department of Ayush. The selection might have been sanctioned by the Stat Government. There may be selection/approval by the State of Jharkhand, but, so far as appointment letters are concerned, never the draft was approved by the Secretary of the department and before any draft is sanctioned by the Secretary of the concerned department, Under Secretary was kidnapped and he was compelled to sign certain papers on the original file as per allegation at Annexure F to the counter affidavit filed by the Chief Secretary. Likewise, there are other irregularities also connected with the appointment letters which are enumerated in the charge sheet. Charge sheet is at Annexure 5 to the counter affidavit filed by the Chief Secretary of the State of Jharkhand and, therefore, it is submitted by learned Advocate General that petitioner is suspended during the course of departmental inquiry and now charge sheet is already issued and if the petitioner co-operates, the departmental inquiry will be completed as early as possible and practicable, preferably within a period of two months and if the petitioner permitted to resume the duties, being a high ranking officer, there are ail chances that the may tamper with the evidences.

4. Having heard learned Counsels for both the sides and looking to the facts and circumstances of the case, it appears that:

(i) The present petitioner is the chairman of the Selection Committee of Medical Officers in the Department of Ayush. Several Medical Officers were selected by him and the names were sent to the Government for its approval.

(ii) It appears that out of whole list, some of the candidates were appointed as Medical Officers in the Department of Ayush. So far as second lot of Medical Officers is concerned, it appears that file has moved to the Government for necessary sanctions etc. It also appears that the necessary sanctions etc. were given by the Government even for

second lot of Medical Officers in the Department of Ayush, looking to Annexure 5 to the memo of the present petition.

(iii) It appears that before the final appointment draft is sanctioned by Secretary, Health, Employment, Education and Family Welfare Department, Government of Jharkhand, Ranchi (respondent No. 3), appointment letters were issued to the Medical Officers. It appears from the fact of the case that one Sri Prakash Heranj, Under Secretary, Health Department had given an application to the Secretary, Health Department (respondent No. 3) to the effect that the present petitioner as well as other persons forcefully taken away the said Under Secretary in a car and he was taken at different place and signatures were taken on the papers by some persons including the present petitioner. There are direct allegations against the present petitioner. The said letter is at Annexure F to the counter affidavit, filed by the Chief Secretary of the State of Jharkhand. The said letter is dated 27th January, 2009 and, thereafter, immediately a Committee was constituted for holding preliminary inquiry. The said Committee held the preliminary inquiry and gave a detailed report, which is at Annexure D to the counter affidavit filed by respondent Nos. 1 and 2 (Chief Secretary, Government of Jharkhand, Ranchi). On the basis of the preliminary report, which was given by Inquiry Committee dated 2nd February, 2009, an order of suspension was parsed by respondent No. 5 dated 13th February, 2009 (Annexure 12 to the memo of the present petition).

(iv) Thus, it appears that suspension has been given to the present petitioner on the basis of a report given by Inquiry Committee after holding a preliminary inquiry. Therefore, it cannot be said that suspension of petitioner is baseless on the contrary, there is cogent and convincing material, as per respondents for suspension of petitioner. It appears that, thereafter, a detailed charge sheet has been given to the petitioner on 5th May, 2009. The said charge sheet is at Annexure J to the counter affidavit, filed by the Chief Secretary of the State of Jharkhand. There are as many as fourteen charges levelled against the present petitioner. Looking to these charges and looking to the preliminary inquiry report, it can not be said that the petitioner is suspended with malafide intention. On the contrary, there is prima facie material against the present petitioner. Counsel for the petitioner has argued in detail and pointed out that how the present petitioner is innocent. I am not inclined to decide the said issue in this writ petition. So far as present petition is concerned, it is only against the suspension order passed by respondent No. 5 dated 13th February, 2009 (Annexure 12 to the memo of the present petition). There are irregularities, as per allegations in the appointment. Detailed charge sheet has also been filed and it is also stated by learned Advocate General of the State that inquiry will be completed as expeditiously as possible and practicable, preferably within a period of two months, if there is cooperation, given by the present petitioner. Looking to the over all facts and circumstances of the case and the nature of charges and looking to the preliminary inquiry report, I am not inclined to entertain this writ petition. The suspension order passed by respondent No. 5 can not be labelled as arbitrary nor it can be labelled as without any basis nor it can be said chat suspension has been issued with a malafide

intention. So far as merits of the allegations are concerned, inquiry will going to be initiated and completed and, therefore, I am not deciding anything on the merits of the charges. Suffice it to say that the suspension order passed by respondent No. 5 is based upon adequate material against the present petitioner. Petitioner being high ranking officer, if allowed to resume he work there are all chances of influencing, the witnesses or of tampering evidences.

5. As a cumulative effect of the aforesaid facts and reasons, there is no substance in this writ petition and hence, the same is hereby dismissed.

6. It is expected from the Chief Secretary or the State of Jharkhand, who has filed the affidavit in this matter that the inquiry against the present petitioner will be completed as expeditiously as possible and practicable, preferably within a period of two months from the date of receipt of a copy of the order of this Court.