

SUPREME COURT OF INDIA

Dr. (Mrs.) Shashi Chaudhury

Vs.

State of Jammu & Kashmir

C.A.No.1947 of 1966

(M. Hidayatullah, C.J. and G. K. Mitter , J.)

03.02.1969

JUDGMENT

HIDAYATULLAH, C.J.

1. This is an appeal against the summary dismissal of a writ petition filed by the appellant in the High Court of Jammu & Kashmir under the following circumstances.

2. The appellant is a lady doctor who was appointed as an Assistant Surgeon Grade I in the State of Jammu & Kashmir on Nov., 30, 1957. Before her appointment, she had been trained at Glancy Medical College, Amritsar by attending a course of M.B.B.S. for which the State Govt paid her a stipend of Rs. 6300/-. An agreement was then entered into by the appellant with the State Govt. that on the completion of her training she would serve the Govt. for a period of seven years and further that if she did not so serve, she would return the money loaned to her. There was also a condition that a penalty of Rs. 5000/- might be imposed on her in case she failed to perform her part of the obligation under the agreement. The appellant joined her service on Dec. 4, 1957. On January 14, 1961, she proceeded on 10 days' casual leave. She did not report for duty but sent an application

for leave for six months; later she again applied for another six months' leave and remained absent from duty. Leave was refused to her, as it is obvious that it must not have been admissible to her to this extent under the rules of service since she had served only for three years. On April 17, 1962, she sent a letter of resignation in which she stated that as her husband who was an Assistant Accountant-General in the office of the Accountant-General, Jammu & Kashmir was transferred to the Government of India service from May 1, 1958 and was posted at Simla outside Jammu & Kashmir, her family circumstances did not permit her to continue in service under the Jammu & Kashmir Government. She stated in that she had been sending leave applications to the Superintendent of S.N.G.S. Hospital at Jammu, but had always been informed that no leave was due to her and that the question of grant of further leave to her did not arise. She concluded the letter by saying that "under the circumstances explained above, I am forced to tender my resignation from the Jammu & Kashmir Government. State Service. This may kindly be accepted."

3. On April 20, 1962, a charge sheet was issued against her in which these facts were communicated, and she was further informed that she, being temporary, could ordinarily get 30 days' privilege leave and three months' leave without pay whereas she had over stayed the period of leave admissible to her under the rules and was therefore being treated as absent from duty. It was also pointed out that she had remained silent in response to letters which had been sent to her to rejoin service and also that she had been on more than one occasion told that there was no question of granting Her leave. The charge sheet then concluded as follows:

"From what has been stated above, it is well established that she is on unauthorised absence and liable for loss of appointment in terms of Article 128 J. & K., K. C. S. R. She would, therefore, explain within 10 days as to why action may not be taken against her accordingly and why the amount of loan along with the amount of penalty may not be recovered from her for not serving the State Government for: seven years as per agreement executed by her. She should submit her explanation through the superintendent S.M.G.S. Hospital, Jammu.'

In reply to this memorandum, she-sent her answer on: April 30, 1962, in which she stated that she had every intention of serving the State Government but the medical department had informed her that no leave was due to her and none could be sanctioned. She reiterated that her family circumstances as explained in her letter of resignation did not permit her to serve the State Government. She also asked for a copy of the agreement to be able to reply to the portion of the notice in which claim for refund of the loan was made since she had not served the Government for a period of seven years.

4. It would appear from this that she had no explanation to offer nor did she ask for an enquiry. She reiterated her stand that she was not willing to serve the State Government and that she had already resigned her post on 17th April, 1962. On receipt of this reply, the Government of Ja'mmu & Kashmir passed an order by which she was dismissed from service with effect from January 24, 1961, i.e. the date from which she was absent from duty without proper leave. The appellant

thereupon wrote a number of letter to the Government in which she threatened the Government with recovery of one lakh of rupees as damages for wrongful termination of service, mental and physical troubles caused thereby and also alleged that she was entitled to an opportunity of showing cause against the action passed under Article 311 of the Constitution of India and under Section 126 of the Constitution of Jammu & Kashmir. She asked the State Government to set aside the order of dismissal, to make an apology for having passed the order and to publish the fact in the Gazette. She again reiterated that she should be relieved from service on the basis of her resignation of April 17, 1962 of which she enclosed a copy.

5. We need not refer to the other communications which she sent to the Government. However, on March 18, 1964, a Government order was issued and the order of 18th September, 1962 which dismissed her was amended by a corrigendum to the effect that the word "dismissal" or "dismissed" wherever they occurred in the previous order should be read as "discharge" or "discharged". On June 16, 1964, the appellant wrote a letter saying that she withdrew her resignation and that she considered herself to be still in service. The Government naturally did not take note of these letters and stood by the order which they had passed earlier.

6. The appellant thereupon tiled a petition under Section 103 of the Constitution of Jammu & Kashmir which is similar to Article 226 of the Indian Constitution pleading that she had been deprived of the opportunity laid down by Section 126 of the Constitution of Jammu & Kashmir and that her dismissal and/or discharge was unconstitutional and liable to be set aside. The High Court summarily dismissed the petition and the present appeal has been brought by special leave of this Court.

7. In this case learned counsel for the appellant based himself upon the provisions of Section 126 of the Constitution of Jammu & Kashmir and rules 30 and 32 of Kashmir Service Regulations, Vol. II and Rule 128 of the Kashmir Service Regulations Vol. I.. The main contention is that the appellant was visited with penalty involving a stigma upon her and that she was therefore entitled to an opportunity, first, of showing cause against the charge, and next, against the action proposed, i.e. to say the penalty which was contemplated. Section 126(2) of the Jammu & Kashmir Constitution In so far as it is material, reads as follows:

No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken..... provided that this sub-section shall not apply:

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The section is in pari materia with the provisions of Article 311(2) of the Indian Constitution but is not ipsissima ovarbs. It will be noticed that whereas under the Indian Constitution, there is clear provision for an enquiry and an opportunity at the enquiry, and a second opportunity against the action proposed to be taken against the Government servant, the Jammu & Kashmir Constitution does not in terms state that there should be two such opportunities.

It only says that the Government servant should be given a reasonable opportunity of showing cause against the action proposed to be taken against him. Even if it be assumed for the purposes of this case that she was entitled to two opportunities namely, to meet the charge arid then to show cause against the punishment proposed, the situation here is very different from the ordinary case of a Government servant whose conduct is enquired into as a result of some dereliction of duty on his part. There the charge sets out the grounds on which the action is intended to be taken and the enquiry to be held. Here the facts were quite clear. All that had happened was that having joined her service and taken 10 days' casual leave, the appellant absented herself from duty for a period of nearly a year. She was informed about what had happened and her attention was drawn to Article 128 of the Jammu & Kashmir Service Regulations which provides that absence without or after the end of leave involves loss of appointment except as provided in Article 203(b), or when due to ill-health, in which case the absence must produce the certificate of a medical officer. The Regulations also allow the government to give a grace of 7 days which is not the case here nor is such a course applicable to the facts. In other words, on her continued absence from service, she incurred loss of appointment. The notice told her that she had so incurred loss of appointment and asked her to say what she had to say. In answer, she only sent her resignation or rather referred to her earlier resignation and stated that may be accepted. Her statement that she was willing to serve the Jammu & Kashmir State Government meant nothing. This is an odd kind of service when the person remains absent without taking leave for a year. It appears to us that being faced with domestic life and also the problem of having to return the money with penalty she wished to steer a middle course, namely, to remain with the family & also to pretend to be in service. This is not one of those cases in which the requirements of the Constitution compel the appointing authority to hold a full-dress enquiry with witnesses and opportunity to cross-examine the witnesses which have been the foundation of the rulings given by this Court. This is an exceptional case of complete dereliction of duty and a pretence of serving without even attending a day on duty. In these circumstances, the charge sent to her sufficiently communicated to her what was to happen to her and she was also adequately given an opportunity of showing cause against the loss of appointment. She chose to make no representation on this point and merely sent her resignation and asked it to be accepted. In our opinion, the Government of Jammu & Kashmir, in these circumstances, was justified in terminating her services. It is true that they passed an order of dismissal which made a stigma and it is probable that if this had remained so, she would have been entitled to plead that she should be given an opportunity of showing cause against the action proposed as indeed Section 126 of the Jammu & Kashmir Constitution also requires. But this was corrected later by a corrigendum to which we have referred. In other words, she was treated as discharged from service when she had loss of appointment and that in our opinion is the end of the matter.

Our attention was drawn to a decision of this Court reported in *Jai Shanker v. State of Rajasthan* (1) in which overstayal after the end of the leave was treated as not leading to termination of service and it was held that the person whose service was so terminated was entitled to notice and enquiry

under Article 311(2). That case is easily distinguishable. There the man had not remained absent deliberately but was ill and had sent medical certificate showing his illness. He had also stated that he would rejoin duty as soon as he would be able to do so. There was no charge sheet framed against him. What the Govt. did was not to order his reinstatement when he joined and that was considered an act of dismissal without an enquiry, charge or notice to the party concerned. The case is easily distinguishable from this case where there has been an ample opportunity to the appellant to show cause if she cared and where after being given an opportunity, she chose not to show any cause whatever. The other cases of Jammu & Kashmir High Court such as those reported in Daljit Singh v. Inspector-General of Police and Sardar Harbans Singh v. The Transport Commissioner and another (3) are easily distinguishable. They proceed on their own facts. Those facts are not the facts which are to be found in this case. The case is an authority for what it decides and not for what can be deduced from it. This case is a special one of a person who proceeded on leave without any leave due to her and when even after being asked to rejoin, refrained from joining and sent in her resignation to the authority. If there was no enquiry, it was because she did not court an enquiry. On the whole, therefore, we are quite satisfied that the Jammu & Kashmir High Court was perfectly right in dismissing the writ petition without even issuing notice to the State.

9. It was contended before us that in any event the penalty and the recovery of loan should not have been ordered. This is a matter of contract and we do not wish to say anything in this behalf for it should be the subject of litigation in a civil Court.

The appeal fails and is dismissed with costs.