

State of Punjab and Others

Vs

Dr Harbhajan Singh Greasy

Civil Appeal No. 7530 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

12.04.1996

JUDGMENT

1. Leave granted.

2. We have heard learned counsel on both sides. The respondent was charged for being absent from duty in the emergency of attending on the flood victims between 18-7-1975 and 21-7-1975. He was further charged for other derelictions of duty. The details are not necessary. Suffice it to state that enquiry was conducted and the Enquiry Officer submitted his report that Respondent 1 had admitted that he was having a private practice at Moga during the period of his suspension in spite of the directions issued by the Government in the suspension order to remain at headquarters. Accordingly, the disciplinary authority removed him from service which came to be challenged in the High Court. The learned Single Judge allowed the writ petition and directed reinstatement with consequential benefits. On appeal, the Division Bench confirmed the same in the impugned order dated 17-11- 1993 in LPA No. 398 of 1992. Thus, this appeal by special leave.

3. It is seen that the Enquiry Officer's report is based on the alleged admission made by the respondent. But, unfortunately, the Enquiry Officer has not taken his admission in writing. Subsequently, the respondent has denied having made any admission. As against the denial of the delinquent, we have only the statement of the Enquiry Officer which is not supported by any statement in writing taken from the respondent. Under those circumstances, High Court may be justified in setting aside the order of dismissal. It is now a well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry, the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the enquiry and order passed thereon. The High Court had committed illegality in omitting to give the said direction. Since the respondent had retired from service, now no useful purpose will be served in directing to conduct enquiry afresh. However, the respondent is not entitled to the back wages as he avoided responsibility as a doctor to treat the flood victims and that was cause for the suspension.

4. The appeal is accordingly allowed. No costs. Disallowance of the back wages would not stand in the way of computation of the pensionary benefits as if he had continued in service.