State Of Kerala & Others

v.

A.K. Gopakumar

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

Civil Appeal No. 2203 Of 2012 (Special Leave Petition (Civil) No. 34496 Of 2010) | 21-02-2012

1. Leave granted.

2. Respondent - Dr.A.K. Gopakumar, who joined service as Assistant Surgeon, Health Services in the State of Kerala on 01.01.2002 and as Lecturer in Anesthesiology, Government Medical College, Trivandrum on 09.04.2003 made an application to the Principal of the college on 01.06.2006 for grant of two months' leave. However, without waiting for sanction by the competent authority, he went abroad and joined service in a foreign country. The Principal rejected the respondent's application by citing scarcity of the staff as the reason. In December, 2006, Director, Medical Education, Kerala issued notice to the respondent and directed him to join the duty, but he did not respond. Thereafter, departmental proceedings were initiated against the respondent and charge-sheet dated 25.02.2007 was published in the local newspapers.

3. The respondent, who was keeping a track of the proceedings initiated against him filed reply dated 03.03.2007 but did not join the enquiry proceedings. After taking note of the fact that the respondent had taken up employment in a foreign country without obtaining permission from the competent authority and had not shown inclination to rejoin the post of Lecturer in the medical collage, the State Government passed order dated 17.7.2007 under Article 311(3) of the Constitution and dismissed the respondent from service by invoking Rule 18(ii) of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 (for short, 'the Rules').

4. The respondent's contract with the foreign employer ended in December, 2009. Thereafter, he came to India and filed Writ Petition (C) No.8646 of 2010 for quashing order dated 17.07.2007 by asserting that the action taken by the State Government was contrary to Article 311 and the Rules. The learned Single Judge dismissed the writ petition by observing that the respondent's absence from duty was unauthorized and he failed to avail the chance given by the competent authority to rejoin the duty. The Division Bench of the

High Court took an extraordinary compassionate view of the gross misconduct committed by the respondent and directed that he be appointed if there is any vacancy in the cadre by observing that he is a qualified person and was already working as a Senior Lecturer in the Government Medical College. The Division Bench also opined that the stand taken by the appellants herein was against their own interest because a doctor otherwise qualified had been thrown out of service for absence from duty for one and a half years whereas large number of other doctors were granted leave and allowed to rejoin the duty.

5. We have heard learned counsel for the parties and carefully perused the record.

6. Learned senior counsel appearing for the respondent made strenuous efforts to convince us that the order dismissing his client from service was illegal per se because the same was not preceded by an enquiry held in accordance with the mandatory provisions contained in the Rules and Article 311 of the Constitution, but we have not felt convinced. In a given case, we may have dealt with the issue of violation of the rules framed under proviso to Article 309 of the Constitution for holding departmental enquiry and also the question whether the Government was justified in invoking Article 311(3) of the Constitution and Rule 18(ii) of the Rules in detail but, in the facts of this case, we do not see any justification to undertake that exercise because the facts which constituted misconduct have not been disputed by the respondent and he has no explanation to offer as to why he left the place of posting without obtaining permission from the competent authority and why did he take employment in a foreign country without obtaining prior permission from the competent authority. At the cost of repetition, we may mention that the respondent had applied for two months' leave from 01.06.2006 to 31.07.2006 and went to a foreign country without waiting for its sanction and without obtaining permission from the competent authority. During the so called leave period, the respondent secured employment in a foreign country. Not only this, he did not respond to the notice issued in December, 2006 requiring him to join the duty. After initiation of the disciplinary action, the respondent had an opportunity to rejoin the duty but he did not avail the chance given to him by the Director, Medical Education. Therefore, we are inclined to take the view that the holding of regular departmental enquiry would have been an empty formality and we are in complete agreement with the learned Single Judge that the respondent's prayer for quashing the order of dismissal did not merit acceptance. Another argument made by learned senior counsel for the respondent with equal vehemence is that large number of other similarly situated doctors were allowed to rejoin the duty but his client was not allowed to do so and in this manner he has been subjected to discrimination. We do not find any merit in the submission. There cannot be any equality in the matter of assessment of the gravity of misconduct committed by those who are employed by the Government for rendering professional services in the medical collages and hospitals. Undoubtedly, the respondent had committed gross misconduct inasmuch as he left the college when his services were required the most. We do not know how many patients waiting for surgery may have suffered due to absence of anesthesiologist. Therefore, it will be wholly unjust to invoke

Article 14 of the Constitution for nullifying the decision taken by the State Government to dispense with the services of the respondent by way of punishment.

7. It is also apposite to note that the writ petition filed by the respondent on 15.03.2010 was highly belated and the High Court would have been fully justified in refusing to entertain the respondent's prayer because he had not offered any explanation for the time gap of 2 years and 8 months between the issue of the order of dismissal and filing of the writ petition. For the reasons stated above, the appeal is allowed, the impugned judgment is set aside and the order passed by the learned Single Judge dismissing the writ petition filed by the respondent is restored. The parties are left to bear their own costs.