

WP(C) 70/2001
BEFORE
THE HON'BLE MR. JUSTICE P. C. PHUKAN

(1) By this application under Article 226 of the Constitution the petitioner prays for quashing the order dated 1. 3. 2001 (Annexure-11) terminating her services as Laboratory attendant in the Medical Department under the Government of Arunachal Pradesh.

(2) I have heard Mr G. Ete, learned counsel for the petitioner and Mr N. N. Saikia, learned advocate General, A. P. appearing for the State respondents. I have also considered the records of the case.

(3) The facts not in dispute may be briefly stated as follows. The petitioner was first appointed as un-skilled contingency staff for a period of six months w. e. f. 1j. 4,1990 to 30. 9. 1990 vide Government order dated 26. 4. 1990 (Annexure-1). The period was extended from time to time by issuing orders (Annexure-2 a, 2b, 2c). Thereafter, by an order dated 30. 5. 1994 (Annexure-3) she was appointed as Laboratory Attendant on ad-hoc basis in the Medical Department. One of the conditions is that her appointment can be terminated giving one month's notice. Admittedly, some time after her joining she fell ill.

(4) Now, the petitioner's case is that after prolonged medical treatment she regained her health and reported for joining her duty with medical fitness certificate dated 1. 7. 95 (Annexure-7), issued by the authorised medical Attendant. But she was told to wait. Unfortunately she again fell ill and suffered for a long time. When she recovered from her illness she came to resume her duties, but was again told to wait. Ultimately, she submitted a representation dated 13. 12. 2000 (Annexure-8) before the respondent No. 2 Director of health Services, Government of Arunachal Pradesh to allow her to join her duty. Unable to get any response, she filed writ petition w. P. (C) No. 191 (AP)/2000 and this Court disposed of the same by an order dated 8. 1. 2001 (Annexure-9) directing the Director of Health Services to consider and dispose of her representation by passing a speaking order and to communicate the result to the petitioner. Pursuant to this order, the Director of Health Services disposed of the petitioner's representation by rejecting her prayer to allow her to join her duty and also by terminating her services vide order dated 1. 3,2001 (Annexure-11) impugned in the instant writ petition.

(5) The operative portion of the impugned order dated 1. 3. 2001 reads as under:-

Her long unauthorised absence has been construed as her un-willing-ness to continue in service, and accordingly her services as Lab. Attendant (vide officer order No. Mest-79/43/ 66 dated 30. 5. 94) is terminated. \

(6) The office order dated 30. 5. 94 referred to above appointing the petitioner as Lab. Attendant is not for a limited period. Here, the petitioner continued to be in service as laboratory Attendant till the impugned termination order was passed on 1. 3. 2001 assuming the same to be a valid order. However, this termination order cannot be said to be valid for the reasons stated hereinafter. Rules provide for termination of service of a temporary Govt. servant either with one month's notice or pay in lieu thereof, but in the instant case the condition No. 3 of the appointment letter provides for termination with one month's notice and no such notice was issued to the petitioner. Hence the above decisions are of no assistance to the respondents to show that the impugned termination order is valid. Another decision in Principal of Institute of Post Graduate medical Education's case 1995 Supp (4)SCC 609 relied upon by Mr Saikia is clearly distinguishable.

(7) In any view of the matter, the impugned termination order dated 1. 3. 2001 (Annexure-11) cannot be allowed to stand, and the same is set aside and quashed .

(8) The State respondents shall reinstate the petitioner in service within one month from the date of receipt of this order. In case, in the meantime, the post earlier held by the petitioner has been filled up, a supernumerary post shall be created to accommodate her. The concerned authority shall take a decision as per relevant rules as to the petitioner's entitlement to any arrear pay and allowances for the period prior to her reinstatement. The writ petition is allowed to the extent indicated above. No costs.