



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

D.B. Special Appeal Writ No. 1674/2018

CNR: RJHC010735092018 | URN: SAW / 3003U / 2018

Sheela Verma D/o Sh. Jannath Verma, Aged About 60 Years, By Caste Verma, Resident Of D-14, Hiran Magri, Housing Board Colony, Near Bsnl Colony, Udaipur (Raj.)

----Appellant

Versus

1. State Of Rajasthan, Through The Secretary To The Government, Medical And Health Department, Secretariat, Jaipur
2. The Director, Medical And Health Services, Government Of Rajasthan, Jaipur

----Respondents

For Appellant(s)	:	Mr. Divik Mathur
For Respondent(s)	:	Ms. Aditi Sharma Ms. Kanchan Jodha

HON'BLE MR. JUSTICE ARUN MONGA

HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT

Order(Oral)

Reportable

13/10/2026

Per: Arun Monga, J.

1. The appellant herein assails the order dated 23.08.2018 passed by the learned Single Judge, whereby the writ petition challenging her dismissal from service *vide* order dated 11.03.2003, the appellate order dated 03.01.2007 and the enquiry report communicated *vide* notice dated 02.05.2002, was dismissed.

2. As per the facts on record, the appellant was appointed as Nurse Grade-II in the Medical and Health Department in 1977 and promoted as Nurse Grade-I in 1991. She proceeded on leave on 09.04.1994 and sought extensions on account of ill health. Disciplinary proceedings



were initiated against her for unauthorised absence, and a charge-sheet dated 23.12.1995 was issued. The appellant submitted her reply and appeared for a personal hearing on 22.03.1996. She contended that she repeatedly sought permission to resume duty but received no response. She subsequently received another charge-sheet alleging unauthorized absence and failure to comply with directions to resume duty and learnt that two annual grade increments had already been withheld with cumulative effect by an order dated 04.04.1996.

2.1 It is stated that the appellant appeared before the Enquiry Officer on 06.06.2000 and submitted her explanation. The enquiry report dated 16.01.2002 was communicated to her along with a show-cause notice dated 02.05.2002. She challenged the findings, contending that no departmental witnesses had been examined and that there was no proof of service of the communications allegedly directing her to resume duty. However, the disciplinary authority dismissed her from service *vide* order dated 11.03.2003. The appellant filed a departmental appeal under Rule 23 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. While the said appeal remained pending, the appellant approached this Court by filing S.B. Civil Writ Petition No. 5030/2006. *Vide* order dated 20.11.2006, this Court directed the respondents to decide the departmental appeal within 45 days. In light thereof, the departmental appeal was subsequently dismissed *vide* order dated 03.01.2007.

2.2 The appellant thereafter challenged the dismissal order dated 11.03.2003 and the appellate order dated 03.01.2007 before the learned Single Judge, alleging violation of the principles of natural justice and the applicable service rules. The said writ petition was also dismissed *vide* order dated 23.08.2018, which has been assailed by the appellant in the present special appeal.



3. Learned counsel for the appellant submits that the learned Single Judge has dismissed the writ petition without properly considering the grounds raised by the appellant. He contends that the impugned order dated 23.08.2018 does not adequately deal with the challenge to the disciplinary order dated 11.03.2003 and the appellate order dated 03.01.2007, both of which are non-speaking orders passed without recording findings on each charge or demonstrating due application of mind. It is submitted that the disciplinary and appellate authorities failed to comply with Rules 16(9) and 30 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, respectively.

3.1 Learned counsel further submits that the findings recorded in the enquiry report are contradictory, as the Enquiry Officer noted the absence of proof that the communications directing the appellant to resume duty had been served upon her, yet proceeded to hold her guilty of unauthorized absence and insubordination. He contends that no departmental witnesses were examined, no documents were duly exhibited to establish the charges, and the burden of proving the alleged misconduct was wrongly shifted upon the appellant. He also submits that the appellant had repeatedly sought permission to join duty and had participated in the enquiry proceedings, contrary to the findings recorded against her.

3.2 Learned counsel for the appellant lastly submits that the learned Single Judge failed to consider the requirement that disciplinary and appellate orders must disclose reasons and reflect proper application of mind. He contends that the enquiry proceedings stand vitiated for violation of the principles of natural justice and that, in any event, dismissal from service is grossly disproportionate to the alleged misconduct.



4. *Per contra*, learned counsels for the respondents oppose the submissions advanced by the appellant and contend that the disciplinary proceedings were conducted in accordance with the applicable service rules and that the charges of unauthorized absence and insubordination stood established. They submit that the learned Single Judge has rightly dismissed the writ petition and that no interference with the impugned orders is warranted.

5. In the aforesaid backdrop, we have heard learned counsels for both the parties and perused the case file.

6. Before we proceed further, it would be apposite to notice the impugned order dated 23.08.2018 passed by the learned Single Judge. Relevant part thereof is reproduced as under:-

(xxxx.....xxxx.....xxxx)

“19. After hearing learned counsel for the parties and on a bare perusal of the record of the case, this Court finds that the petitioner seems to have abandoned her services from 09.04.1994 onwards, and the respondents kept on giving her the chance to rejoin the duties; but since the petitioner was never serious about her joining the duties, therefore, her unauthorized absence from duty continued, and the respondents were compelled to pass the impugned order dated 11.03.2003, dismissing the petitioner from service, which was affirmed by the appellate authority on 03.01.2007.

20. This Court does not find any reason as to why the impugned orders dated 11.03.2003 and 03.01.2007 should be interfered with by this Court, as they are perfectly in accordance with law. Moreover, the facts of the case do not inspire confidence of this Court so as to make any interference in favour of the petitioner. The prolonged voluntary absence of the petitioner from 09.04.1994 to 11.03.2003 is writ large, and in such circumstances, no employer can have a lenient view.

21. In light of the aforesaid observations, the present writ petition is dismissed.”

7. Before we deal with the merits of the case, one caveat at the threshold is necessary. Having gone through the impugned order passed by the learned Single Judge *vis-a-vis* the departmental proceedings conducted against the appellant and the nature of the delinquency, we do not propose to re-examine the same and are in agreement with the



outcome of the disciplinary proceedings. With this in mind, we propose to deal with the impugned order upholding the highest punishment of dismissal from service under Rule 14 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958.

8. In the course of the hearing, upon a query put to learned counsels for the parties, it transpired that, having joined service way back in 1977, the appellant had an unblemished service career up to 1994, when she went on earned leave and, for reasons best known to her, never reported back for duty, resulting in the adverse consequences noted hereinabove.

9. In this context, reference may be made to the relevant pension rules, wherein the qualifying service required to earn pension has been prescribed as follows:

“Rule 12. Commencement of qualifying service

(a) Except for compensation gratuity, a Government servant’s service does not qualify till he has completed eighteen years of age.

(b) Subject to the provisions of these rules, the qualifying service of a Government servant shall commence from the date he takes over charge of the post to which he is first appointed, either substantively or in an officiating or temporary capacity.”

10. In light of the aforesaid, we are of the view that the administrative authorities ought to have taken a view proportionate to the delinquency of the appellant. However, without even resorting to the lesser penalties prescribed under Rule 14, the authorities straightaway imposed the highest punishment of dismissal from service.

11. The ordinary rule of service jurisprudence governing punishment is that the delinquency must be of such a nature that no person of common prudence could have imposed any punishment other than the one awarded. The present is not a case of such nature, as no alternative was explored to extend to the appellant the benefit of the lesser



penalties prescribed under Rule 14, which are arranged in ascending order according to the gravity of the delinquency. As already observed, removal or dismissal from service constitutes the highest and gravest form of punishment, and the administrative authorities straightaway resorted to the same, with which we are not in agreement, particularly in light of the law laid down by the Hon'ble Supreme Court in **Dev Singh v. Punjab Tourism Development Corporation Ltd.**¹ The relevant extract reads as under:

(xxxx.....xxxx.....xxxx)

“6. A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the abovenoted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case.

7. Applying the said principles laid down by this Court in the cases noted hereinabove, we see that in this case the appellant has been serving the respondent Corporation for nearly 20 years with unblemished service, before the present charge of misconduct was levelled against him. The charge itself shows that what was alleged against the appellant was misplacement of a file and there is no allegation whatsoever that this file was either misplaced by the appellant deliberately or for any collateral consideration. A reading of the charge-sheet shows that the misplacement alleged was not motivated by any ulterior consideration and at the most could be an act of negligence, consequent to which the appellant was unable to trace the file again. The disciplinary authority while considering the quantum of punishment came to the conclusion that the misconduct of the nature alleged against the appellant should be viewed very seriously to prevent such actions in future, whereby important and sensitive records could be lost or removed or destroyed by the employee under whose custody the records are kept. Therefore, he was of the opinion that a deterrent punishment was called for, forgetting for a moment that no such allegation of misplacing of important or sensitive record was made in the instant case against the appellant and what he was charged of was misplacement of a file, importance or sensitiveness of which was not mentioned in the charge-sheet. Therefore, in our opinion, the disciplinary authority was guided by certain facts which were not on record, even otherwise, we are of the opinion that when the Service Bye-laws applicable to the Corporation under Service Bye-law 17 provide various minor punishments, we fail to appreciate why only maximum punishment available under the said Bye-laws should be awarded on the facts of the present case. We think the punishment of dismissal for mere misplacement of a file without any ulterior

¹ (2003) 8 SCC 9





motive is too harsh a punishment which is totally disproportionate to the misconduct alleged and the same certainly shocks our judicial conscience. Hence, having considered the basis on which the punishment of dismissal was imposed on the appellant and the facts and circumstances of this case, we think to avoid further prolonged litigation it would be appropriate if we modify the punishment ourselves. On the said basis, while upholding the finding of misconduct against the appellant, we think it appropriate that the appellant be imposed a punishment of withholding of one increment including stoppage at the efficiency bar in substitution of the punishment of dismissal awarded by the disciplinary authority. We further direct that the appellant will not be entitled to any back wages for the period of suspension. However, he will be entitled to the subsistence allowance payable up to the date of the dismissal order.”

(xxxx.....xxxx.....xxxx)

12. Accordingly, we are inclined to partly allow the appeal by modifying the impugned order passed by the learned Single Judge and converting the punishment of dismissal from service into compulsory retirement, along with proportionate pension, as envisaged under Rule 14, *ibid*.

13. With these observations, the appeal stands allowed. The respondents are directed to re-process the appellant's case and extend to her the consequential benefits, along with applicable interest in accordance with the service rules, within three months from the date of uploading of this order on the website of this Court.

14. The appeal stands disposed of. All pending applications also stand disposed of.

(YOGENDRA KUMAR PUROHIT),J

(ARUN MONGA),J

1/Arti Rakhecha