

HIGH COURT OF MADHYA PRADESH : JABALPUR**WRIT PETITION No.14194/2007**

Dr. Varsha Mukherjee

Vs.

State of Madhya Pradesh & another

Shri D.K. Dixit, learned Counsel for the petitioner.

Shri Divesh Jain, learned Govt. Advocate for the respondents-State.

Present : Hon'ble Shri Justice K.K. Trivedi

O R D E R**(24/09/2015)**

1. The petitioner, who was an Assistant Surgeon in the Public Health and Family Welfare Department and was posted at Bhopal, has approached this Court by way of this petition under Article 226 of the Constitution of India seeking a direction against the respondents to pay the salary for 52 months and 18 days with interest, which was due on different dates but was not paid to the petitioner.

2. It is the case of the petitioner that she was appointed vide order dated 29.08.1984 on adhoc basis in the pay scale of Rs.1000-1920/- for a period of six months or till the period the candidates are made available by the Madhya Pradesh Public Service Commission. The petitioner gave the joining on the post where she was posted by the said order. Though the joining of the petitioner was accepted but the salary was not paid to her by the concerned authority stating that the post was not sanctioned. The grievance

was raised by the petitioner that even after joining on 01.09.1984 she was not being paid the salary. Directions were issued to draw the salary of the petitioner from any vacant available post of the same cadre and pay the same to the petitioner. However, the petitioner was not paid the salary for a period from 01.12.1984 to 30.11.1985. Continuous correspondence in that respect was being made by the petitioner.

3. The petitioner was transferred from Gwalior region to Bhopal and was posted in Sultania Hospital, Bhopal where she joined on being relieved on 18.07.1986. It appears that though the adhoc appointments of doctors were made by the State authorities but adequate arrangements were not made for sanction of the post. Again the petitioner was not paid the salary, therefore, she made representation on 30.10.1986. A letter was sent to the authorities at Rewa to draw the salary and pay the same to the petitioner. Again for a considerable long time the petitioner was not paid the salary with effect from 01.04.1986 to 18.07.1986. Again the authorities at Satna and Rewa were directed to draw the salary of the petitioner from available vacant post and to pay the same to the petitioner. On making of the representation the immediate superior officer of the petitioner, i.e. the Superintendent of Sultania Hospital, Bhopal, also wrote to the authorities that the petitioner was not being paid the salary for a long period. The correspondence in that respect was going on but no action whatsoever was taken for payment of salary to the petitioner. Ultimately the matter was referred to the State Government by the Superintendent of Sultania Hospital, Bhopal on 14.06.1988. Despite that no action was taken by the respondents in that respect. In between, the petitioner was again not paid the salary with effect from 01.04.1991 to

30.04.1992 and 01.10.2005 till the date of filing of the affidavit in the writ petition, i.e. 30.09.2007. It is the case of the petitioner that a legal notice was issued by the petitioner but instead of paying the salary to the petitioner, reply was given to the Counsel engaged by the petitioner that unnecessary correspondence should not be made with the departmental authorities. Again a representation was made to the higher authorities of the State but no action whatsoever has been taken by the authorities.

4. The notice of the writ petition was issued to the respondents and they were called upon to file a reply to the specific allegations made in the writ petition. However, as the facts have been recorded in the order-sheet, despite the service of notice of the writ petition, no return whatsoever was filed by the respondents. This Court has entertained the writ petition on 12.10.2007, notices were sent to the respondents by registered A.D. on 17.10.2007, though acknowledgment of the service of notice is not available in the record but since the same were sent by registered A.D., the same were treated to be served on the respondents. The matter was listed on 19.11.2007 and on that day learned Government Advocate had taken time to file the return, which was allowed. Again on 02.01.2008 prayer for grant of time was made for filing of the return, which was allowed. On 22.09.2009 again three weeks' time was granted to the respondents to file the return. Thereafter the matter was listed on 24.04.2015 and again on a prayer made by the respondents, time was allowed to file the return. On 15.06.2015 again when the matter was listed, the following order was passed :

“Mr. D.K. Dixit, learned counsel for the petitioner.

Mr. Amit Seth, learned Government Advocate for the respondents.

When the matter was taken up today, learned Government Advocate once again prays for adjournment in order to enable him to file reply.

The aforesaid prayer is vehemently opposed by learned counsel for the petitioner.

The order sheets indicate that on 22.9.2009, 25.3.2015 and 24.4.2015 the respondents have already been granted time to file reply. The writ petition was filed in the year 2007 and it pertains to monetary claims of the petitioner, who is at the fag end of her service career.

However, in the interest of justice, by way of last indulgence three weeks' further time is granted to file reply. It is made clear that if no reply is filed by the next date of hearing, the Officer Incharge of the case shall remain personally present before this Court.

Office is directed to supply copy of this order to Mr. Amit Seth, learned Government Advocate during the course of the day.

Let the writ petition be listed for further orders on 20.7.2015."

5. Despite this order since again return was not filed, by way of last indulgence opportunity was granted to file the return to the respondents vide order dated 20.07.2015 and showing indulgence again an opportunity was granted to file the return on 19.08.2015. However, no return whatsoever has been filed.

6. In view of the aforesaid, the callous negligence of the respondents in dealing with such a petition filed before this Court is proved. On one hand when the claim was made by the petitioner by making representations, the said representations were not decided nor any decision was intimated to the petitioner. Even when the legal notices were issued to the respondents, the lawyer was informed

not to indulge in such unnecessary correspondence. When the notices of the writ petition were served on the respondents, as indicated herein above, no attempt was made to place anything on record to adjudicate the claim of the petitioner nor any settlement of the claim of the petitioner was done by the respondents. This indicates that in fact the respondents were bent upon to harass the petitioner by not making payment of the salary to the petitioner.

7. Notably it was the requirement of providing the doctors to the citizens of the State for which adhoc appointments were made by the State authorities in exercise of their power. If the adhoc appointments were made, while issuing the orders of posting of those appointees, it was the responsibility of the State officials to verify whether a duly sanctioned post is available to accommodate such adhoc appointee or not. If appointment of the petitioner was made in a place where no such vacancy was available and if she was treated as surplus, it was not the folly on the part of the petitioner but a negligence on the part of the respondents for which at least some arrangement should have been done to make payment of salary to the petitioner since the respondents were taking work from the petitioner. In fact there was non-compliance of the mandatory statutory provisions of service rules inasmuch as the respondents-State could not initiate the process of recruitment of sufficient number of physicians, doctors and specialists to provide medical assistance to the citizens of the State. This being the constitutional responsibility of the respondents-State to shield such lapse, ultimately to regularize the adhoc appointees the State Government has made the rules known as Madhya Pradesh Adhoc Appointment

(Regularization of Service) Rules, 1986 and under the said rules, services of persons like petitioner were regularized. Even when the petitioner was appointed on adhoc basis since the appointment was made on a scale of pay, the petitioner was required to be paid the salary. This being the requirement of law and a duty cast on the respondents, failure to pay the salary to the petitioner or grant other benefits of service, cannot be ignored. The petitioner is, thus, entitled to payment of salary for the period the same was not paid to her. For the delay caused in making such payment and for all such harassment made to the petitioner, she would be entitled to grant of interest on the said amount as well.

8. The other issue raised by the petitioner is though she was not allowed to indulge in private practice but in terms of the scheme made by the State Government, she was not being paid non-practicing allowance right from 1999. It is further contention of the petitioner that since non-payment of salary has resulted in releasing the yearly increments of the petitioner timely, the petitioner was not even considered for grant of Kramonnati pay scale in terms of the scheme made by the State Government. All this has happened only because the respondents have not cared to decide the claim of the petitioner expeditiously.

9. In view of the aforesaid, the writ petition is allowed. The respondents are directed to verify the period for which the salary was not paid to the petitioner as indicted in prayer Clause 7.1 of the writ petition and as has been reflected in this order and to make payment of salary to the petitioner with interest at the rate of 9% per annum from the date the salary was due till the date of actual payment. The respondents are further commanded to examine

whether the petitioner was entitled to grant of non-practicing allowance with effect from the year 1999 and if so, to pay the said amount to the petitioner with interest at the rate of 9% per annum from the date it was due till the date of actual payment. The respondents are further commanded to regularize the salary of the petitioner in appropriate manner by release of the increments of pay in accordance to the entitlement of the petitioner, re-fix and revise the salary of the petitioner, workout all the arrears of salary and to pay the said amount to the petitioner with interest at the rate of 9% per annum from the date the amount was due till the date of realization. Let this order be complied with within three months from today, failing which the rate of interest would be 15% per annum on the amount found due/payable to the petitioner.

10. The respondents are further called upon to conduct an enquiry in respect of non-payment of salary to the petitioner and to recover all the amount of interest from the said erring officials as no loss to public exchequer is required to be caused because of the negligence on the part of the officials of the respondents-State. The Principal Secretary of the department is directed to see that this order is complied with or else this Court will not hesitate in drawing suo motu contempt proceedings against the said authority, in case of non-compliance of the order of this Court.

11. The writ petition is allowed to the extent indicated herein above. However, in the peculiar facts and circumstances of the case, there shall be no order as to costs.

(K.K. Trivedi)
Judge