

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT NAINITAL**

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K. Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 29/NB/DB/2015

Dr. Seema, D/o Sri Kamal Ram, R/o F-52, D.G.S. Society, Plot No. 06,
Sector-22, Dwarika, New Delhi, Permanent R/o Village-Rankhila, Post-
Bainshet, District Almora (Uttarakhand).

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Aayush & Aayush Education, Civil Secretariat, Dehradun.
2. Director, Homeopathic Medical Services of Uttarakhand, Dehradun.
3. District Homeopathic Medical Officer, District Rudraprayag, Uttarakhand.

.....Respondents

Present: Sri Kuldeep Singh Rawal, Ld. Counsel
for the petitioner

Sri V.P. Devrani, Ld. A.P.O.
for the Respondents

JUDGMENT**DATED: SEPTEMBER 19, 2017****(HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J))**

1. The petitioner has filed this petition for the following reliefs:

“(i) To quash the impugned orders dated 03.12.2014 & 10.12.2014 passed by Respondent no. 1 and 2 respectively, through which services of the petitioner had been terminated ex-parte without affording any opportunity of hearing to the petitioner (Annexure No. 1 & 2) .

(ii) To reinstate the petitioner at the same post of Homeopathic Doctor and allow her to work at Homeopathic Hospital Budnalasya.

(iii) To make payment of entire salary of the period of illegal dismissal of petitioner’s services in the interest of justice to the petitioner.

(iv) Grant any other relief, order or direction, which this Hon’ble Tribunal deem fit and proper in the facts and circumstances of the case.

(v) Award the cost of the petition to the petitioner.”

2. Briefly stated facts are that the petitioner was appointed on the post of Homeopathic Medical Officer vide appointment order dated 04.04.2011 passed by the respondents and joined her duties at Homeopathic Hospital, Budanalasya, District Rudraparyag on 15.4.2011. After serving for 15 months, she became absent from her duty on 01.07.2012 and left the Headquarter. Thereafter, she moved application for her transfer and also for leave without pay. Respondents did not allow any leave and issued notice to resume her duty and issued a final

notice to resume her duty with the warning that her services may be dispensed with and ultimately, vide order dated 03.12.2014 and 10.12.2014 passed by the respondents no. 1 & 2 respectively, the service of the petitioner was terminated.

3. The petitioner has challenged the orders of the respondents on the ground that the impugned order was passed ex-parte without affording any opportunity of hearing; no enquiry as per the concerned Rules was conducted; no charge sheet was issued to her and the services were terminated without affording any opportunity of defence to her. According to the contention of the petitioner, she proceeded on leave for sufficient and valid reason to look after her old aged parents and she was duly entitled for extra ordinary leave which was illegally denied to her. The impugned orders were passed violating the principles of natural justice and very harsh penalty of termination from service for alleged misconduct of absence from duty, has been passed. The order was also vitiated due to non-service of the show cause notice and denial of opportunity of hearing, hence this petition.

4. The petition has been opposed by the respondents with the contention that the appointment of the petitioner was made on 04.04.2011 as a probationer for a period of two years under the concerned rules. She joined the services at the place of posting on 15.04.2011 but without prior permission and sanction of leave, she became absent w.e.f. 01.07.2012 causing disruption in essential medical services, even though she was on probation period. She did not resume her duty even after considerable period of time, inspite of several notices to resume her duty. A final notice dated 04.12.2013 was also issued to her to resume her duty within 15 days and she was informed that due to

absence during probation period, her services may be terminated, but petitioner did not report on duty. The matter was referred to the government and the Public Service Commission and thereafter, a simplicitor order of removal from service was passed under Rule 3(1) of the Uttarakhand Temporary Government Servant Termination Rules, 2003. The respondents have contended that the petitioner was under probation period till 04.04.2013, whereas she became absent from duty on 01.07.2012 and she was having no lien in service for grant of any leave without pay. The impugned order was not a punitive order and casts no stigma and it was simplicitor order of removal from services of a probationer as she was not successful to impart a satisfactory service during the probation period so her services were terminated accordingly. The contention of the petitioner is misconceived, misdirected and the petition is devoid of merit, hence deserves to be dismissed.

5. We have heard both the sides and perused the record.

6. It is an admitted fact that the petitioner was appointed on the post of Homeopathic Medical Officer after her selection by the Public Service Commission and relevant service Rules are “The Uttarakhand Homeopathic Medical Services Rules, 2011 (herein referred to as said rules)”. After following the procedure for selection as prescribed in Part V of the said Rules, the appointment to the service was made in accordance with Rule 16 mentioned in Part VI of the said Rules. Rule 18 of the said Rules clearly provides that a person on appointment to a post on service shall be placed on probation for a period of two years. Rule 18 reads as under:

“(1) A person on appointment to a post on service shall be placed on probation for a period of 02 years.

(2) The appointing authority may, for reasons to be recorded, extend the period of probation in individual cases specifying the date upto which the extension is granted.;

Provided that save in exceptional circumstances the period of probation shall not be extended beyond one year and at no circumstances beyond two years.

(3) If it appears to the appointing authority any time during or at the end of the period of probation that a probationer has not made sufficient use of his opportunity or has otherwise failed to give satisfactions he may be reverted to his substantive post, if any, and if he does not hold a lien on any post, his services may be dispensed with.

(4) A probationer, who is reverted or whose services are dispensed with under sub-rule(3), shall not be entitled to any compensation.

(5) The appointing authority may allow continuous service, rendered in an temporary capacity in a post included in the cadre for any other equivalent for higher post, to be taken into account for the purpose of computing the period of probation. ”

7. Admittedly after joining the services in April 2011, the petitioner was on probation till the month of April 2013 and she was required to render a satisfactory service during her probation period, but during this probation period, she became absent in July 2012 and as per sub-rule 3 of Rule 18 of the said Rules, a probationer’s services may be dispensed with at any time, if she/he is failed to give satisfaction to the employer. Learned counsel for the respondents has argued that the petitioner has failed to render her service during the period of probation and

she became absent and did not report back to her duty even after the sufficient notice and a final notice to this effect, reminding her about probation period was also issued, hence her services were terminated and dispensed with accordingly.

8. Learned counsel for the petitioner has argued that the petitioner was removed from the services on the ground of misconduct of absence from duty but no such enquiry about such misconduct was conducted, hence the procedure of termination of her services was vitiated. Learned counsel for the respondents replied to this point that the impugned order of removal from service is without any stigma and it was an order simplicitor for ceasing or terminating the services on the ground that the petitioner did not report on her duty. The court is of the view that admittedly, the petitioner was on probation and was governed by Rule 18 of the said rules. She was not entitled to any leave without pay until she was confirmed in the services. She was not entitled for any lien on the post as per the Fundamental Rules. Accordingly, she was not entitled for any leave without pay. In spite of the notices issued by the respondents, reminding her about the probation period, she remained absent and it was sufficient ground to hold that the petitioner was failed to give satisfactory service to her employer/respondent.

9. Although the consent of the Public Service Commission was also obtained before removal from services but it makes no difference because no allegation of misconduct was imputed against her, neither any charge sheet was issued and the removal from services was not made on account of any stigma or misconduct by the petitioner, but it was made simplicitor due to

the reasons that the petitioner failed to give satisfactory service during her probation period.

10. Learned counsel for the petitioner has argued that in the appointment letter, it was not mentioned that the petitioner will be placed on probation. In view of the court, it makes no difference because the appointment of the petitioner was made as per the concerned Rules and Rule 18 of the said rules clearly mentioned that a person on appointment to a post on service shall be placed on probation for a period of 02 years and without completing the satisfactory service during probation period, the petitioner became absent and did not report back on duty, hence this court is of the view that it is not the case of termination on the basis of any misconduct or disciplinary proceedings, but it is a case of terminating/dispensing with the services of a probationer due to unsatisfactory service during her probation period and the respondents were under their right to do the same as per rules. No violation of any rule was committed and the petition, devoid of any merit, deserves to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(D.K.KOTIA)
VICE CHAIRMAN (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: SEPTEMBER 19, 2017
NAINITAL

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