

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

WP(C) No. 1542/2021

*Reserved on: 23.04.2024*

*Pronounced on: 08.05.2024*

Dr. Vijay Tikoo  
W/O Sh. Surinder Tikoo  
Additional Professor, Department of Anesthesiology,  
Sher-i-Kashmir Institute of Medical Sciences,  
Soura, Srinagar  
R/O 471-A Gandhi Nagar, Jammu.

...Petitioner/Appellant(s)

Through : Mr. M.Y.Bhat, Sr. Advocate with  
Mr. Hamza Prince, Advocate.

**Vs.**

1. Union Territory of J&K  
Commissioner/Secretary to Government,  
Health & Medical Education Department,  
J&K Civil Secretariat, Jammu/Srinagar.

2. Director,  
Sher-i-Kashmir Institute of Medical Sciences,  
Soura, Srinagar

...Respondent(s)

Through : Mr. Ilyas Nazir Laway, GA.

**CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE**  
**JUDGMENT**

1. In this petition, the petitioner, *inter alia* seeks quashment of the Office Order No. SIMS-163 (Per) of 2019 dated 29.11.2019, issued by respondent no.2- Sher-e-Kashmir Institute of Medical Sciences (SKIMS) Srinagar (for short 'the Institute'), in terms whereof the case of the petitioner, after consideration was found without any merit, as such, rejected. Petitioner also seeks quashment of the Government Order No. 83-SKIMS of 2012 dated 02.08.2012, by virtue of which the petitioner has been deemed to have been removed from service with effect from July 1991. Furthermore, the petitioner prays for writ of mandamus commanding the respondents to treat the petitioner having been prematurely retired from service with effect from 02.03.2002 and release all service/pensionary benefits in her favour.

2. Briefly stated facts leading to filing of the instant writ petition are that the petitioner was appointed as Assistant Surgeon in the respondent-Institute, on 22.06.1972 and was working as Associate Professor in the year 1990; that due to militancy in Kashmir Valley, the petitioner migrated to Delhi in the year 1990 and was registered as a migrant with J&K Resident Commissioner New Delhi; that she has also drawn her leave salary from 1990 to June 1991; that after completion of 20 years of qualifying service, the petitioner submitted an application on 02.03.2002 to respondent No.2 seeking her voluntary retirement as an Associate Professor; that while the petitioner was awaiting orders with regard to her voluntary retirement, a public notice dated 08.01.2005 came to be issued to the faculty members of respondent-Institute, having migrated early in 1990, either reported to have, discontinued drawl of their migrant salary from respective Migration Registration Centre, Delhi / Jammu or left the services and are absconding without any whereabouts known to the Migration Registration Centers or to the Institute, to give reasons as to why they be not treated unauthorisedly absent from the posts of their appointment at respondent-Institute.
3. Petitioner contended that in response to the said notice, she filed reply in which it was stated that she was neither un-authorisedly absent from duty nor has she failed to return after leave; that the petitioner being a Government employee has an option to seek voluntary retirement under Article 226(3) of the Jammu & Kashmir Civil Service Regulations; that merely because the petitioner has not drawn her leave salary from July 1991 and onwards, would not mean

that she was absent from duty; that the petitioner also submits that the respondents, instead of deciding her application seeking voluntary retirement, have resorted to the process of declaring her un-authorisedly absent; that all the employees who have migrated from Kashmir Valley are not actively involved in the performance of duty yet they are not being treated as on unauthorised absence; that the said notice dated 08.01.2005 came to be challenged through the medium of SWP No. 468/2005 and this Court vide order dated 16.04.2019 directed the respondents to proceed with the enquiry, if any, and in case enquiry goes in favour of the petitioner, the respondents shall consider her representation for voluntary retirement as per relevant provisions of law.

4. It is being alleged that during the pendency of the said writ petition, the respondents issued a notice dated 25.03.2008, asking the petitioner to show cause as to why she shall not be treated as removed from the rolls of the respondent-Institute, from the date of her established unauthorized willful absence w.e.f., July 1991 from her respective Migrant Registration Centre; that in reply to the said show cause notice, the petitioner submitted that she was neither absent from duty nor applied for any leave and her case does not fall under the provisions of Article 128 of CSR; that after the copy of the judgment of this Court dated 16.04.2019 was served on the respondents, the petitioner time and again approached the respondents regarding implementation of the said judgment, instead the petitioner received impugned communication/order No. SKIMS-1631(Per) of 2019 dated 29.11.2019 through registered post by

virtue of which she was informed that her claim of voluntary retirement has been rejected.

5. Respondents have filed their reply wherein it is contended that no right of the petitioner has been violated by the respondents and that the petitioner has approached this Court with unclean hands and has tried to mislead this Court with distorted and concealed facts, as such, she is not entitled to any relief from this Court.
6. It is further contended that as per available service records the petitioner was lastly working as Additional Professor in the Department of Anesthesiology in respondent-Institute. During mass migration in the year 1990, she among others had migrated from the Valley and had got registered as a migrant initially with Migrant Registration Centre at Government Medical College Jammu, where she had availed leave salary from 02/1990 to 04/1990. She had discontinued drawl of leave salary from the said Migrant Registration Centre after 04/1990 and had got registered with another Migrant Registration Centre at Resident Commission Office New Delhi. It is further contended that the petitioner had submitted an application on 20.11.1990 through Migrant Registration Centre (Resident Commission Office) New Delhi, with the request that she may be allowed to do her private practice and her performance allowance (Non Practicing Allowance) may be stopped. In its response, the Resident Commission Office was informed vide memo dated: 14.02.1991 that the petitioner may be advised to join back her services at SKIMS as her services were badly required, but no response was received.

7. It is being further pleaded that the petitioner had submitted application on 02.03.2002 requesting for her voluntary retirement from the Government services without mentioning the intended date of retirement; that a proposal was placed before the competent authority for consideration of the request of petitioner for her voluntary retirement vide No. SIMS/Per/459/2002-2163, dated: 18.04.2002, however, the competent authority had desired to ascertain the date of intended voluntary retirement from the petitioner. Therefore, the date of discontinuation of drawl of salary i.e. 07/1991, was conveyed to the competent authority vide memo dated 04.07.2002. The petitioner on 26.10.2002 informed that her voluntary retirement may be given effect from 01.11.2002 which was communicated to Financial Commissioner Health & Medical Department vide memo dated: 26.10.2002, with copy to the petitioner as well. It is further submitted that the service book of the petitioner was forwarded to the office of Accountant General J&K Srinagar vide memo dated: 20.02.2003, for examination as required under rules, who observed missing entries in her service book w.e.f. 02.07.1989 till the date of her seeking voluntary retirement vide letter dated: 08.12.2003.
8. Respondents contended further that since the petitioner had sought voluntary retirement w.e.f. 01.11.2002 but had abandoned drawl of her leave salary w.e.f. 07/91, there was a service gap between the requested voluntary retirement and abandonment of leave salary. The petitioner was accordingly asked to approach the concerned Migrant Registration Centre for physical verification and for

requisite entries in her service book vide letters/reminders bearing Nos. ME-NG- SKIMS/333/2002 dated 28.08.2002, No. SIMS/ Per /459/2004-2610-16 dated 27.05.2004, No. SIMS/Per/459/2004-5353-58 dated 08.09.2004, and No. SIMS/Per/459/2004-6693- 97 dated: 09.11.2004, but she did not respond at all, besides it was reported by the Resident Commission Office New Delhi vide letter No. KRC/Acctt/5524/04 dated 19.03.2004 that she did not turn up for the same.

9. It is the further contention of the respondents that the petitioner was asked vide No. SIMS/Per/459/2004-2610-16 dated 27.4.2004 to explain her position with regard to her absence and discontinuation of the drawl of leave salary from the Office of Resident Commission New Delhi, where she was lastly registered as a migrant but she failed to respond. Thereafter, the petitioner had been reminded many more times but she had not responded to official communications in this regard. The petitioner, on failure to respond the official communications, was among others asked to specify the reasons as to why she be not treated unauthorizedly absent from the post of her appointment at SKIMS following discontinuance of drawl of leave salary from the respective Migrant Registration Centre, through the Public Notice issued by the SKIMS on 29.06.2004 under No. SIMS/Per/Mig/Inf/2004-3766-75, published in the Daily Newspaper "Kashmir Times" and other local dailies of the J&K on 26.07.2004. The petitioner was given more opportunities in this regard, but every time she failed to respond, instead challenged the public notices before this Court and the Court vide order dated 26.04.2005 passed

in SWP No.468/2005 directed the SKIMS to proceed with the enquiry, if any, but not to pass any final orders without leave of the Court.

**10.** It is pleaded that the issue of petitioner along with other similarly situated cases of doctors, was brought to the notice of the Government, which constituted a three member committee of the officers vide Govt. Order No.1313- GAD of 2005 dated 26.10.2005, to look into the cases of doctors, who have responded the Public notices issued by the respondent-Institute and report thereto had to be submitted to Government by the said committee. The committee in its threadbare deliberations on 29.11.2006, reached the conclusion that the reasons indicated by petitioner in her reply dated 6.2.2005 to the Public Notice dated 8.1.2005, are not justified and her unexplainable unauthorized absence has compelled her to seek legal recourse. The committee, therefore, recommended dealing with her case of unauthorized absence under rules and the petitioner was accordingly charge sheeted for abandoning her services/leave salary w.e.f., 07/1991 from the Migrant Registration Centre at New Delhi which she replied through her counsel on 2.4.2007.

**11.** Respondents in their reply further stated that, thereafter, the case of the petitioner, among other similarly situated cases, was placed before the Competent Authority with the factual position vide No. SIMS/Per/315/Mig/Inf/07-4184 dated 26.05.2007 for a decision in the matter, who ordered an enquiry in the matter through Secretary to Govt., Health & Medical Education Department vide Govt. Order No.SKIMS-25 of 2007 dated 28.6.2007. The Enquiry Officer had

extended ample opportunity to the petitioner through local and national print media to specify the reasons in writing as to why she should not be treated on unauthorized absence from the date she had abandoned her services and also provided her an opportunity of personal hearing on 31.8.2007, 3.9.2007 and 5.9.2007 in the office of Principal, Govt. Medical College Jammu, but she did not avail the said opportunity and finally the Enquiry Officer submitted his report under his endorsement No. SIMS/Per/315/MIG/INF/07-4184 dated 18.10.2007, and among other doctors, recommended her removal from the rolls of SKIMS from the date she had discontinued drawal of migrant leave salary from Migrant Registration Centre on the ground of abandoning the service of SKIMS, after giving her a final notice. Finally, the petitioner was asked to show cause vide Show Cause Notice No. SIMS/315/Mig/08-2226-34 dated 25.03.2008, as to why she shall not be treated as removed from the rolls of SKIMS from the date of her established unauthorized willful absence w.e.f, 07/1991 from her respective Migrant Registration Centre. The petitioner was removed from her services from the respondent-Institute, wide impugned order dated 02-08-2012, w.e.f. July 1991.

**12.** Learned senior counsel for the petitioner, while reiterating the submissions made in the petition, submits that on perusal of the order impugned it transpires that the respondents have rejected the claim of the petitioner without considering the provisions of Article 128 of CSR and other Government orders which have been issued regarding the migrant employees by the Government from time to time after their migration from 1990 onwards. He further contends



that the petitioner had migrated alongwith other Government employees of minority community in the year 1990 and were allowed to draw their salary (leave salary), as they were treated to be on special leave, not having any adverse effect on their service condition; that the migrant employees were given all the benefits and were treated at par with other employees; that the petitioner after her migration came to be registered as migrant with J&K Resident Commission at Delhi and continued to draw her salary from the said office till 7/1991. His further argument is that the Government of Jammu & Kashmir General Administration Department vide its order No.742-GR (GAD) of 1990 dated 16.7.1990 ordered that in continuation and partial modification of Order No.637-GR of 1990 dated 6.5.1990, drawal of pay in favour of migrant employees was ordered to be paid to the employees who had migrated from Kashmir to Jammu which includes the employees who have migrated to Delhi and in whose favour salary/leave salary has been authorized to be drawn by the Resident Commissioner J&K Government New Delhi and the benefit, which was allowed in favour of the employees who were registered at Jammu was extended to the employees who were registered at Delhi.

- 13.** Mr. Bhat, further argued that in view of militancy, law and order problem in the Valley and also because of threat to the lives of minority community, they were not adjusted but were allowed to draw their salary and other service benefits by treating them in service including the retiral benefits. According to learned counsel, the petitioner was putting up at Delhi as the situation in Valley was

deteriorating day by day and she intended to seek voluntary retirement, as such, submitted an application on 2.3.2002 to the respondents and after receiving the same her case was processed by respondents and she was recommended for voluntary retirement, which is clear from the communication dated 18.4.2002. However, instead of allowing the petitioner to retire voluntarily, the respondents issued show cause notice dated 8.1.2005, that too after a lapse of more than three years treating the petitioner on unauthorized absence which is clearly against the facts. It is the submission of learned counsel for the petitioner that the respondents have mentioned names of other persons also in the notice but the case of the petitioner is totally different from them. The petitioner was duly registered with Resident Commissioner Delhi as the persons who had migrated from the Valley and were residing at Delhi were directed by the State Government to get themselves registered with the Resident Commissioner.

- 14.** Learned senior counsel for the petitioner further submitted that the respondents have arbitrarily with *malafide* intention deprived the petitioner from the benefit of voluntary retirement and have passed the impugned order which is totally against the provisions of the CSR and violative of principles of natural justice. Furthermore, learned counsel submits that the enquiry has been conducted at the back of the petitioner and the respondents have failed to provide an opportunity of being heard to the petitioner. The impugned orders have been issued in violation of the principles of natural justice and guidelines laid down in CSR and other service laws.

15. Learned Government Counsel appearing for the respondents, ex-adverso, submits that it is true that the petitioner being a migrant registered in the office of the Resident Commissioner New Delhi, had applied for voluntary retirement from service; that her case was examined by respondent No.2- Director SKIMS Soura Srinagar, who forwarded the same to the Accountant General for requisite 'no objection' in the matter as required under rules. However, the Accountant General did not find the petitioner eligible for the benefit of voluntary retirement on the ground that the service entries in her service book were missing from 1991 onwards, thereafter, the respondent No.2 took up the matter regarding entries, with the Resident Commissioner, who reported that the whereabouts of the petitioner were not known since June 1991. The petitioner was, accordingly informed for completion of the necessary formalities prescribed under rules for voluntary retirement. However, the petitioner did not respond. She was, accordingly, served a notice dated 27.04.2004 to explain her position with regard to her absence. The petitioner did not respond to the same and, therefore, a notice was issued on 8.01.2005 calling upon the petitioner along with others, as to why they be not treated unauthorisedly absent from duties. However, instead of replying the same, the petitioner approached this Court by filing a petition SWP No. 468/2005. The Court vide order dated 26.04.2005 passed in said petition, while issuing notice, directed the respondents to proceed with the enquiry, if any, but restrained the respondents from passing any final order without leave of the Court.

**16.** Learned counsel for the respondents submits that the Government had already constituted a Committee for conducting the enquiry into the matter. The petitioner's earlier petition came to be dismissed for non-prosecution, vacating the interim direction vide order passed in the year 2009 and on completion of enquiry into un-authorized absence of the petitioner, she was removed from the rolls of the respondent-Institute in the year 2012. It is further submitted that the respondents have fulfilled all the pre-requisite codal formalities before issuing the order of removal of the petitioner from the services and that there was no arbitrariness in the impugned order.

**17.** Heard learned counsel for both sides, perused and considered the matter.

**18.** The facts as emerged from the pleadings of the parties, reveals that the petitioner, who had been working as Additional Professor in the Department of Anesthesiology with respondent No.2- SKIMS and had to migrate to Delhi in view of mass migration and after initially being registered as migrant in Jammu was later registered at another Migrant Registration Centre with Resident Commission Office New Delhi, wherefrom she used to receive migrant leave salary from May 1990 to June 1991. As per the record, she had discontinued drawl of leave salary from the office of Resident Commission New Delhi w.e.f, July 1991 allegedly leaving no information with regard to her whereabouts. On 20.11.1990, she had submitted an application through Migrant Registration Centre New Delhi with a request that she may be allowed to do her private practice in Delhi and her non-practicing allowance may be stopped and in response to this

communication she was advised to join back her service at SKIMS, as her services were badly required but no response was received.

**19.** Petitioner on 02.03.2002 requested for her voluntary retirement from the Government service without mentioning the intended date of retirement. Respondent-Institute moved a proposal which was placed before the competent authority for consideration vide communication dated 18.04.2002, which desired to ascertain the date of intended voluntary retirement from the petitioner-doctor and the date of discontinuation of drawl of salary was conveyed vide memo dated 04.07.2002. However, petitioner submitted an application on 26.10.2002 informing that her voluntary retirement be given effect from 01.11.2002, which was communicated to competent authority vide memo dated 26.10.2002. In the meanwhile her service book was forwarded to the office of Accountant General J&K Srinagar vide memo dated 20.02.2003, for title verification as required under rules, who observed missing entries in her service book w.e.f. 02.07.1989 till the date of her seeking voluntary retirement vide communication dated: 08.12.2003 and the petitioner was asked to approach concerned Migrant Registration Centre for physical verification and for requisite entries in her service book vide letters/reminders dated 28.08.2002, 27.05.3004, 08.09.2004 and 09.11.2004, to which she allegedly did not respond at all.

**20.** Thereafter, petitioner was asked vide communication dated 27.4.2004 to explain her position with regard to her absence and discontinuation of the drawl of leave salary from the Office of Resident Commission New Delhi, where she was lastly registered as

a migrant, however, she failed to respond. Public notices, published in daily local newspapers of J&K including 'Kashmir Times' and 'Daily Excelsior' were also issued, however, the petitioner did not respond to those public notices as well. The petitioner, however, challenged the public notice dated 08.01.2005 through SWP No. 468/2005 before this Court, which passed a direction on 26.04.2005 that respondent-Institute may proceed with enquiry, if any, but will not pass any final order, without leave of this Court. The petitioner was accordingly charge sheeted vide No. SKIMS/PER/MIG/INF/2007-2497-2505 dated 10.03.2007, for abandoning her services/leave salary w.e.f., 07/1991 from the Migrant Registration Centre at New Delhi, which she replied through her Advocate on 02.04.2007, which was received by the respondent-Institute on 16.04.2007.

**21.** The enquiry was conducted through Secretary to Government, Health & Medical Education Department, ordered vide order dated 28.06.2007, however, it was alleged that the petitioner did not avail opportunity to contest the charges during enquiry, and finally Enquiry Officer submitted his report on 18.10.2007, and among other doctors, recommended her removal from the rolls of the respondent-Institute from the date of discontinued drawl of migrant leave salary from Migrant Registration Centre on the ground of abandoning the service of respondent-Institute. After giving her a final notice, the competent authority conveyed its approval to the issuance of final notice and eventual action and the petitioner on 25.03.2008 was asked to show cause as to why she shall not be

treated as removed from the rolls of SKIMS from the date of her established unauthorized willful absence w.e.f., July 1991 from her respective Migrant Registration Centre. The petitioner filed her reply on 21.04.2008 through her Legal Advisor but the reply was found not convincing.

**22.** The important point to be noted in this case is that when the enquiry was yet to be finalized for removal of the petitioner, her petition SWP No. 468/2005 was dismissed on 23.04.2009 for non-prosecution and vide impugned order, the petitioner was removed from service on 02-08-2012. The petitioner, after the order of her removal filed the present writ petition, challenging the impugned order dated 29.11.2019, whereby her representation, against her removal and for retirement, was rejected.

**23.** The petitioner, admittedly, while being on the rolls of the respondent-Institute had to migrate, in view of mass migration of minority community from the Kashmir Valley due to untoward situation at that point of time and settled somewhere in Delhi and also registered herself as a migrant with Migrant Registration Centre with Resident Commission New Delhi. She had drawn her leave salary for some period and then applied that she should not be paid non-practicing allowance as she intended to do private practice and then she stopped to receive leave salary as she did not return back to receive the same. In the meantime, in the year 2002, petitioner applied for her voluntary retirement from the services of the respondent-Institute and her case for retirement was also initiated by the respondent-Institute, as the matter was also taken up with the

Accountant General, who raised certain queries with regard to non-recording of entries, during migration period, in her service book.

**24.** The petitioner, who had migrated due to untoward situation in the Valley and had applied for voluntary retirement; process in this regard was also initiated but just for non-recording of entries in her service record, during her migration period, the case for her voluntary retirement was not finalized and instead enquiry was initiated for her alleged absence from duty and she was, accordingly, removed from service.

**25.** During the arguments, learned GA submits that the petitioner's qualifying service, age and her past record is clean, required for consideration of her voluntary retirement, however, in view of the enquiry pending against her, the voluntary retirement was not permissible. This contention, however, seems to be misplaced for the fact that an application for voluntary retirement had been moved by the petitioner in the early point of time from initiation of enquiry into her absence. The petitioner had applied for voluntary retirement in the year 2002 w.e.f., 01.11.2002, whereas, show cause had been issued to the petitioner in the year 2005 and the petitioner had challenged her removal order in ground-H of the petition.

**26.** In the considered opinion of this Court, recording of entries in the service book of the petitioner was not with the petitioner but was within the competence of Controlling Authority, as such, the petitioner should not have been blamed and held accountable for that lapse. The respondent-Institute or the Migrant Registration Centre should have taken steps for recording required entries in the service



book of the petitioner to process her voluntary retirement. The proceedings for initiating disciplinary proceedings against the petitioner with regard to absence from duty, appear to have been initiated arbitrarily. Having regard to the facts and circumstances of the case, the impugned order of removal of the petitioner from service, based on the enquiry, in the considered opinion of this Court, is wrong, illegal and arbitrary action on the part of the respondents, which is not sustainable in the eyes of law.

**27.** The respondents were under legal obligation to record/complete required entries in the Service Book of the petitioner and process her case for voluntary retirement, subject to fulfilment of other conditions of service length, age and service record. Initiation of enquiry for unauthorized absence is fully misconceived, in view of the fact that the petitioner, as a migrant, was not supposed to attend her duties in Kashmir, after her migration, as per Government order, issued on the subject. Moreover, the petitioner had applied for voluntary retirement, much earlier in the year 2002, whileas, she was charged for unauthorized absence in the year 2005. Therefore, initiation and conduct of enquiry against the petitioner and consequent termination of her services, were all misconceived and unsustainable.

**28.** Viewed thus, the initiation, conduct, conclusion of enquiry, rejection order and resultant removal of petitioner from service, being wrong, illegal and arbitrary, are liable to be quashed.

**29.** Accordingly, the petitioner succeeds in her petition, which is allowed with the following directions :-

- i) Through a writ of certiorari, Government Order No. SIMS/Per/659/2019-7460-61 dated 29.11.2019, by virtue of which the case of the petitioner has been rejected, is hereby quashed.
- ii) Through a writ of certiorari, Government Order no.83-SKIMS of 2012 dated 02.08.2012 issued by the respondents, by virtue of which the petitioner has been deemed to have been removed from service with effect from July 1991, is also quashed.
- iii) Through a writ of certiorari, the enquiry conducted by the Enquiry Committee, being against the principles of natural justice, is quashed.
- iv) The respondents are commanded in the nature of writ of mandamus, to consider treating the petitioner having been prematurely retired from service with effect from 02.03.2002, and release all the service / pensionary benefits in her favour.

**30.** Writ Petition, along-with pending applications(s), is disposed off.

**( M. A. CHOWDHARY )  
JUDGE**

Srinagar  
08.05.2024  
*Muzammil. Q*

***Whether the order is reportable:      Yes / No***