

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. \_\_\_\_\_ OF 2024  
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO.21901/2016

STATE OF U.P. & ORS.

APPELLANT(S)

VERSUS

DR. SUDARSHAN KUMAR

RESPONDENT(S)

WITH

CIVIL APPEAL NO. \_\_\_\_\_ OF 2024  
SLP(C) NO. 21902/2016

WITH

CIVIL APPEAL NO. \_\_\_\_\_ OF 2024  
SLP(C) NO. 21887/2016

WITH

CIVIL APPEAL NO. \_\_\_\_\_ OF 2024  
SLP(C) NO. 6234/2020

WITH

CIVIL APPEAL NO. \_\_\_\_\_ OF 2024  
SLP(C) NO. 18316/2016

WITH

CIVIL APPEAL NO. \_\_\_\_\_ OF 2024  
SLP(C) NO. 21903/2016

WITH

CIVIL APPEAL NO. \_\_\_\_\_ OF 2024  
SLP(C) NO. 21890/2016

O R D E R

1. Leave granted.
2. The respondents are doctors who were employed in the health service of the State of Uttar Pradesh. Considering the fact that large number of doctors remained absent from duty for few years, an order was made on 3<sup>rd</sup> May, 2010 by the Deputy Secretary, Government of Uttar Pradesh. Recourse was taken to clause (b) of the second proviso to Article 311 (2) of the Constitution of India and the employment of these doctors including respondents was terminated.
3. These appeals arise out of order(s) passed in the writ petitions/appeals filed by the respondents challenging the order of termination. The High Court considered the decision of this Court in the case of Union of India & Another vs. Tulsiram Patel, [(1985) 3 SCC 398] and in particular what is held in paragraph 130. After considering the said decision, a finding of fact was recorded in the impugned judgment of the High Court that clause (b) of the second proviso of Article 311(2) of the Constitution of India was not attracted. Therefore, by the impugned order(s), the High Court set aside the orders of termination. But denied arrears of salary. In some cases, a liberty was granted to the State to proceed against the

officers.

4. The submission of the learned Senior Counsel appearing for the appellants is that if the order of termination is read, that itself establishes that the case was covered by clause (b) of second proviso to Article 311(2) of the Constitution of India. The High Court has ignored what was stated in the order of termination. He submits that it was impracticable to hold inquiry against few thousand doctors who remained absent for years.

5. After having perused the impugned order(s), we find that there was a specific challenge in the writ petitions filed by the respondents to the action of applying clause (b) of the second proviso to Article 311(2) of the Constitution of India. However, the submissions made by the appellants before the High Court as recorded in the impugned order(s) shows that the only argument canvassed by the appellants was that the respondents were absent for a long period and public interest was suffering. No other argument is recorded by the High Court. The learned senior counsel appearing for the appellants submits that very detailed submissions were made before the High Court justifying the applicability of clause (b) of the second proviso of Article 311(2).

6. If according to the appellants, submissions actually

made were not noted by the High Court, the remedy of the appellants was before the High Court. However, that was not done. We may note here that impugned orders are of the year 2015.

7. However, we find that as far as respondents doctors are concerned, the fact that they remained continuously absent for more than 4 to 5 years is an admitted fact. None of them have pleaded that after termination order was passed on 3<sup>rd</sup> May, 2010, they continued to survive without either practicing medicine or without taking any other employment. They have not pleaded that they had no income from the date of termination.

8. We find that after noticing that the respondents have long absence of more than 4 to 5 years, the High Court ought to have moulded the relief by not granting reinstatement. The writ jurisdiction under Article 226 of the Constitution of India is always discretionary and the conduct of the persons who invoke the jurisdiction has to be taken into consideration while granting reliefs.

9. Therefore, in the facts and circumstances of the case, we are of the view that interests of justice will be met if the appellants are directed to pay to the respondents a lumpsum compensation of Rs.2,50,000/- each in lieu of reinstatement.

10. Accordingly, the impugned orders are modified. We direct the appellants to pay compensation of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand) each to the respondents within a period of three months from today. On their failure to pay the compensation to the respondents within a period of three months from today, interest will be payable on the said amount from today till the date of payment at the rate of 9% per annum. There will be no order as to costs.

11. The appeals are accordingly partly allowed.

IA No. 107665/2023 - Application for intervention

12. Learned counsel appearing for the applicants seeks permission to withdraw the I.A. as he wants to raise all the contentions in the pending appeal before the High Court.

13. Pending application(s), if any, shall stand disposed of as withdrawn with liberty to raise all permissible contentions in accordance with law.

.....J.  
(ABHAY S.OKA)

.....J.  
(AUGUSTINE GEORGE MASIH)

NEW DELHI;  
DECEMBER 3, 2024.

ITEM NO.8

COURT NO.5

SECTION XI

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petitions for Special Leave to Appeal (C) Nos.21901/2016

[Arising out of impugned final judgment and order dated 06-07-2015 in WA No. 34286/2015 passed by the High Court of Judicature at Allahabad]

STATE OF U.P. & ORS.

Petitioner(s)

VERSUS

DR. SUDARSHAN KUMAR

Respondent(s)

WITH

SLP(C) No. 21902/2016 (XI)

SLP(C) No. 21887/2016 (XI)

SLP(C) No. 6234/2020 (XI)

IA No. 30880/2020 - EXEMPTION FROM FILING O.T.)

SLP(C) No. 18316/2016 (XI)

IA No. 2/2016 - EXEMPTION FROM FILING O.T.

IA No. 107665/2023 - INTERVENTION APPLICATION)

SLP(C) No. 21903/2016 (XI)

(FOR ADDITION / DELETION / MODIFICATION PARTIES ON IA 30342/2021)

SLP(C) No. 21890/2016 (XI)

Date : 03-12-2024 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ABHAY S. OKA

HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI

For Petitioner(s) Mr. Vishnu Shankar Jain, AOR

SLP(C)No.21903/2016 Mr. K. Parameshwar, A.A.G., Sr. Adv.  
Mr. Sarvesh Singh Baghel, AOR  
Mr. Shaurya Krishna, Adv.

For Respondent(s) Mr. Yatish Mohan, Adv.  
Mr. Vinayak Mohan, Adv.  
Mr. Kedar Nath Tripathy, AOR  
Mr. Aditya Narayan Tripathy, Adv.

Mr. Gaichangpou Gangmei, Adv.  
Mr. Arjun D. Singh, Adv.  
Mr. Yashvir Kumar, Adv.  
Ms. Nisha Pandey, Adv.  
Mr. Yimyang Longkumer, Adv.  
M/S Ag Veritas Law, AOR

Mr. Prakash Ranjan Nayak, AOR  
Mr. Mohit Paul, AOR

Mr. Rajiv Yadav, AOR  
Mr. Nishant Bhatia, Adv.

Mr. Anurag Kishore, AOR  
Mr. Lakhan Kumar Mishra, Adv.  
Ms. Somna Drown, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeals are partly allowed in terms of the signed  
order.

Pending application(s), if any, shall stand disposed  
of.

(KAVITA PAHUJA)  
ASTT. REGISTRAR-cum-PS

(AVGV RAMU)  
COURT MASTER (NSH)

[Signed order is placed on the file]