

Court No. - 18

Case :- WRIT - C No. - 2917 of 2020

Petitioner :- Dr. Vijay Arora

Respondent :- King George Medical University Thru. Registrar Lko And Others

Counsel for Petitioner :- Vikas Vikram Singh

Counsel for Respondent :- Abhinav N. Trivedi, Shubham Tripathi

Hon'ble Pankaj Bhatia, J.

Heard the counsel for the petitioner and Sri Shubham Tripathi, the counsel for the University.

The present petition has been filed challenging the order dated 13.09.2019 and the order dated 27.09.2019 whereby the petitioner has been suspended from any medical work and has been restrained from visiting any women's ward of the hospital from 08:00 pm to 08:00 am till completion of his MD course.

The facts in brief are that the petitioner who was working as Junior Resident in the department of Radiotherapy was suspended by means of the order dated 13.09.2019 (Annexure no.1) on the ground that a newspaper publication reported that in the institution in question, some Junior Resident had sexually abused the daughter of a patient and as such based upon which, the enquiry was proposed. Subsequently, on 13.09.2019 itself, the petitioner was served with a show cause notice. The petitioner filed a response to the said show cause notice on 13.09.2019 itself. It is stated that without even considering the reply of the petitioner, the impugned order came to be passed on 27.09.2019 (Annexure no.2) stating that the allegations levelled in the newspaper on 13.09.2019 was got inspected

and after sanction from the Vice Chancellor, the petitioner was suspended for a period of six months from all the medical work and was also restrained from entering any female ward from 08:00 pm to 08:00 am in the morning.

The counsel for the petitioner argues that initially the complaint was made by a Staff Nurse against the ward boy who was working in the ward in question and the same is contained in Annexure no.5. The said complaint was countersigned by the daughter of the patient, however subsequently the daughter of the patient made a separate complaint wherein she also made similar complaint against the ward boy, however she also stated that the petitioner used harsh language against the said complainant. The gist of the complaint made is contained as Annexure no.6. A perusal of the said complaint makes it clear that the petitioner was not named and it was stated that along with the ward boy, another person was also present whose conduct and behaviour was full of anger for which the complainant felt very bad.

A counter affidavit has been filed annexing therewith a copy of the enquiry report based upon which the impugned order has been passed, which is contained as Annexure no. CA-2, the enquiry report based upon the investigation, reported that in various newspapers there was mention of victim's age as 16 years which was found to be incorrect as the age of the victim is of thirty years. It was also recorded that the victim had stated before the Committee that the petitioner had used improper language for which she felt very bad. The enquiry report further found certain allegations against the ward boy as made by the

complainant. After recording the allegations levelled by the complainant before the enquiry committee, the enquiry committee advised the punishment as has been awarded by means of the impugned order.

The counsel for the petitioner argues that the order is bad in law inasmuch as it casts stigma. He further argues that even from the perusal of the enquiry report, which is on record, no allegations based upon which the order has been passed were found to be true, he further argues that even the said enquiry report was never provided to the petitioner prior to passing of the said order nor was the petitioner called by the Enquiry Committee. He lastly argues that even for the sake argument, the enquiry report is treated to be gospel truth, no reasonable man can form a opinion that there was any conduct of the nature which can be termed as misconduct of a sexual orientation leading to the punishment as has been done by means of the impugned order, thus the order suffers from vice of wednesbury arbitrariness also.

Admittedly, the period for which the petitioner was suspended has already come to end, however, the second part of the punishment of not appearing in the female ward from 08:00 pm to 08:00 am still continues against the petitioner.

Considering the material on record, the allegation levelled were against the ward boy and from perusal of the substance of the allegations levelled against the petitioner by the complainant through a letter and subsequently before the enquiry committee, it is clear that there was no

allegation against the petitioner with regard to any misconduct of a sexual nature so as to warrant the punishment as has been awarded to the petitioner by means of the impugned order. Although the order suffers from the vice of procedural arbitrariness also, however, as this Court finds that there was prima facie no substance against the petitioner so as to inflict punishment of the nature inflicted by the impugned order, as such, the same cannot be sustained and is set aside. The petitioner shall be entitled to pursue his courses and studies in accordance with law.

The writ petition stands ***allowed***.

Order Date :- 29.8.2022

VNP/-