
plaintiff wishes to discharge his onus in rebuttal, the same cannot be outrightly rejected. The examination of handwriting expert would held in effective and complete adjudication of the present suit specially keeping in view the observations of the learned Presiding Officer as recorded in the order sheet dated 31st March, 1993. The parties are at issues with regard to the decree passed in the previous suit. The plaintiff and the defendant in the previous suit has challenged the decree in the previous suit basing his claim on the written the statement filed in the previous suit where his right was accepted. It will be in fairness and would cause no prejudice to either of the party if the plaintiff is permitted to lead additional evidence. The plaintiff is not trying to establish a case which he had not pleaded.

(9) In view of my discussion above, I am of the considered view that the learned trial Court has failed to exercise the jurisdiction vested in it. Such an error is apparent on the face of the record. Consequently, the order dated 16th September, 1997 is set aside. The application for additional evidence filed by the plaintiff before the trial Court is accepted. The plaintiff would lead evidence in rebuttal on the date fixed before the trial Court. In order to prevent unnecessary delay, it is directed that the plaintiff would not be given any unnecessary adjournment. The revision petition is allowed. There shall be no order as to costs.

J.S.T.

Before G. S. Singhvi & Iqbal Singh, J.J.

DR. NEETA MEHTA,—*Petitioner*

versus

STATE OF HARYANA & ANOTHER,—*Respondents.*

CWP 1099 of 98

6th May, 1998

Constitution of India, 1950—Arts. 14 & 16—Haryana Civil Medical Services (Class II) Rules, 1978—Rl. 11—Termination of services of probationer—Rule fixing period of probation at 2 years extendable by one year—Maximum period of probation specified at 3 years under the Rules—Termination after 3½ years—No order passed by the Appointing Authority under Rule 11(3) during the

period of extended probation—Petitioner deemed to be automatically confirmed and, therefore, termination of services on the assumption that employee was on probation is invalid and without jurisdiction—On perusal of official record of termination, Court finding action not only arbitrary but also suffering from malice in law—Termination set aside & Rs. 10,000 awarded as costs for harassment & humiliation suffered by the petitioner.

Held, that on a conjoint reading of Rule 11(2) and 11(3) of the Haryana Civil Medical Services (Class II) Rules, 1978, it can be said that the power to take decision regarding confirmation of an officer has to be exercised by the appointing authority within six months of the expiry of extended period of probation. Failure of the authority concerned to pass appropriate order will bring into operation the deeming clause contained in proviso to Rule 11(3) and then the officer concerned will be entitled to claim that he has satisfactorily completed the period of probation. In other words, the appointing authority will be deemed to have divested of its power to pass an order of termination of the service of a probationer on the ground of unsatisfactory work or conduct after the expiry of the period specified in proviso to Rule 11 (3). In any case, respondent No. 1 did not have the jurisdiction to terminate the service of the petitioner in the purported exercise of power under Rule 11(2) after the expiry of maximum period of probation specified in proviso the Rule 11(3). In the absence of any order passed by respondent No. 1 within the period stipulated in Rule 11(3), the petitioner will be deemed to have completed the period of probation satisfactorily and thereafter it was not permissible for respondent No. 1 to exercise power under Rule 11(2) with the assumption that she was still on probation. Therefore, the impugned order terminating the petitioner's service is ultra vires to the power vested in respondent No. 1 to terminate the services of a probationer under Rule 11(2) of the 1978 Rules and it is liable to be declared as without jurisdiction.

Para 9

Further held, that on the basis of the entries made in the Annual Confidential Reports of the petitioners, no reasonable person could form an opinion that her work and conduct was unsatisfactory warranting termination of her service: If the competent authority had taken trouble to go through the record of the petitioner, it could not have been possible for her to direct the termination of petitioner's service. We, therefore, hold that the order

terminating the service of the petitioner has been passed in a casual and arbitrary manner and, therefore, it is not only violative of Article 14 of the Constitution but suffers from malice in law.

(Para 19)

Tribhuvan Dahiya, Advocate for S. P. Laler, Advocate, *for the petitioner.*

Ritu Bahri, Assistant Advocate General, Haryana, *for the respondents.*

JUDGMENT

G. S. Singhvi, J.

(1) Whether the government could terminate the petitioner's services under Rule 11 of the Haryana Civil Medical Services (Class II) Rules, 1978 (hereinafter referred to as 'the Rules') after the expiry of the maximum period of probation specified in the said rule and whether the impugned order dated 8th January, 1998 is liable to be invalidated on the ground of arbitrariness and violation of Articles 14 and 16 of the Constitution are the two inter-related questions which arise for adjudication in this petition.

(2) The facts necessary for deciding this petition are that the petitioner joined the service on 16th May, 1994 in pursuance of the order dated 25th/30th March, 1994 issued by the Government of Haryana appointing her to the Haryana Civil Medical Services (Class-II) on probation for a period of two years. This order was issued on the recommendations of the Haryana Public Service Commission. In terms of para 4 of the order of appointment which enabled the government to extend the period of probation up to 3 years, order dated 25th May, 1996 was issued by the Commissioner and Secretary to Government Haryana, Health Department extending the period of her probation by one year. The extended period of probation ended on 14th May, 1997. Thereafter the government did not issue any order extending the period of probation or terminating the service of the petitioner. However, after lapse of about 8 months counted from the date of expiry of the period of probation, the Financial Commissioner and Secretary to Government of Haryana, Health Departments, issued the impugned order dated 8th January, 1998 terminating the petitioner's service in terms of Rule 11 (2) of the Rules.

(3) The petitioner has challenged the impugned order on the following grounds :

- (i) The government does not have the jurisdiction to terminate her service under Rule 11(2) of the Rules after the expiry of maximum period of probation specified in the recruitment rules.
- (ii) The impugned order is wholly arbitrary and unconstitutional.

(4) In the written statement filed by them through Shri P. L. Jindal, Director General, Health Services, Haryana, the respondents have pleaded that the impugned order is justified because the work and conduct of the petitioner was not found satisfactory during the period of probation. In order to appreciate the stand of the respondents in a correct perspective, it will be useful to reproduce the averments made in paragraph 3 of the preliminary objection and paragraphs 4, 6, 9, 12 and 13 of the main written statement. The same read as under :

“That the work and conduct of the petitioner during the period of probation was considered by the respondents and the same was found unsatisfactory. The ACR of the petitioner for the year 1994-95 was good and for the year 1995-96 was graded as ‘Average’. Therefore, the probation period of the petitioner was extended for one year,—*vide* letter No. 30/53/97-IHBI, dated 9th/18th June, 1997. After the expiry fo three years, the probation case of the petitioner was again examined. The ACR of the petitioner for the year 1996-97 was graded as ‘outstanding’ but there are adverse remarks that the petitioner did not maintain her headquarter properly. Accordingly all the Civil Surgeons were asked to ensure that the headquarter is maintained by the doctors. It is further submitted that the health services are essential services and not maintaining the headquarter for a doctor is a very serious lapse which cannot be condoned. Keeping in view the record of the petitioner, the services of the petitioner have been dispensed with as per Rule 11(2) of the Haryana Civil Medical Services (Class-II) Rules, 1978, during probation,—*vide* Government order dated 29th December, 1997 issued on 8th January, 1998 (Annexure R/1).

It is also submitted that the adverse remarks in the ACR for the year 1995-96 were recorded as under :

Col. No.

1. Laborious and ability	Average
2. Intellectual ability	Average
3. Professional ability	Average
4. Administrative ability	Average
5. Latest professional and literature knowledge	Average
6. Active participation in F.W. Programme	Nil
10. Active Part in Community Programme i.e. Malaria Programme, Small Pox, Eradication Programme, T.B. Control, School Health Programme etc.	Nil
11. Whether the officer maintained her headquarter after closing the office during the holidays.	No
12. How much work did at flood time	No
13. Grading	Average.

These adverse remarks were conveyed to the petitioner,—*vide* D.G.H.S. letter dated 3rd October, 1997. The petitioner represented against these adverse remarks,—*vide* her representation dated 28th November, 1997. On the representation of the petitioner the comments of the Reporting Authority were obtained. The Reporting Authority repeated his stand already taken in the ACR. In view of the comments given by the Reporting Authority, there is no substance to expunge the adverse remarks from the ACR of the petitioner for the year 1995-96. In view of this even at this stage no supporting material finds out in the favour of the petitioner to review the order dated 29th December, 1997. Hence the order dated 29th December, 1997 issued on 8th January, 1998 are justified which are sustainable in the eye of law.”

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In reply to para 4 of the writ petition, it is stated that the probation period was of two years and if it was not cleared it could

be extended for one year. The petitioner joined her duty on 16th May, 1994 and her probation period became due on 15th May, 1996. Her work and conduct was not found satisfactory due to which her probation period was extended for one year w.e.f. 15th May, 1996 to improve her working. A copy of this order was given to the petitioner. In her ACR for the year 1996-97 there were adverse remarks that she does not maintain headquarter occasionally. Whereas the petitioner is getting H.R.A. and it is essential to maintain headquarter being a Medical Officer to provide Emergency Health Services to the public residing there. Thus, the petitioner has not discharged her duties satisfactorily and hence her services were terminated,—*vide* order dated 29th December, 1997/8th January, 1998 for which one month notice was not required, as the petitioner had not crossed the probation period, the petitioner is considered to be purely on temporary basis.

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That in reply to para 6 of the writ petition, it is submitted that the Annual Confidential Reports of the petitioner for the year 1994-95 and 1995-96 were examined. His annual confidential report for the year 1994-95 was 'Good' and that of 1995-96 'Average'. As the record of the petitioner of probation period was not overall 'Good', the probation period was extended for one year with effect from 15th May, 1996 as per Rule 11 of the Rules *ibid*,—*vide* Government order No. 30/57/97-1HBI dated 9th/18th June, 1997.

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That in reply to para 9 of the writ petition, it is submitted that the annual confidential reports of the petitioner for the year 1994-95, 1995-96 and 1996-97 were considered and out of the 3 ACRs one was Good, one was average and one contained adverse remarks about not maintaining headquarter occasionally. The record of the petitioner clearly shows that her work and conduct was not satisfactory. Hence Government dispensed with the services of the petitioner,—*vide* Haryana Government order No. 30/57/97-1HBI dated 9th January, 1998, as per terms of Rule 11(2) of Haryana Civil Medical Services (Class-II) Rules, 1978. These orders were sent to the petitioner at her residential address but have been received back through postal authorities with the remarks that "Yahan se Makan Chhodkar Chala Gaya, Isliye Wapis Jaya."

That in reply to para 12 of the writ petition, it is submitted that the ACR of the petitioner for the period from 1st July, 1995 to

31st March, 1996 was written Average by the Reporting Officer. This ACR was conveyed to the petitioner,—*vide* letter No. 63/N-4E-II-97/8419, dated 3rd October, 1997. The representation of the petitioner against the adverse remarks was received in the office of answering respondent No. 2 on 16th December, 1997. The comments on the representation of the petitioner have been called for from the Reporting Officer,—*vide* this office letter No. 63/N-4E-II-98/574, dated 19th January, 1998. The Reporting Authority gave his comments dated 2nd March, 1998. The Reporting Authority repeated his stand already taken. In view of the comments given by the Reporting Authority, there is no substance to expunge the adverse remarks from the ACR of the petitioner for the year 1995-96.

That in reply to para 13 of the writ petition, it is submitted that the ACR for the year 1996-97 of the petitioner contained the adverse remarks that 'She does not maintain the headquarter occasionally.' These adverse remarks were conveyed to the petitioner,—*vide* letter No. 63/N-4E-II-98/250, dated 13th January, 1998. The representation against the adverse remarks was received in the office of answering respondent No. 2 on 21st March, 1998. The comments of the representation of the petitioner have been called for from the Reporting Officer. The Reporting Authority gave his comments and the Reporting Authority repeated his stand already taken in the ACR. In view of the comments given by the Reporting Authority, there is no substance to expunge the adverse remarks from the ACR of the petitioner for the year 1996-97. It is worthwhile to mention here that untill and unless some specific order is passed by the competent authority, it cannot be presumed that the petitioner has cleared the probation period successfully."

(5) We have heard Shri Tribhuvan Dahiya and Ms Ritu Bahri and have perused the record of the writ petition as well as the record produced by the learned Assistant Advocate General which consists of two files and the Annual Confidential Reports of the petitioner.

(6) Rule 11 of the Rules on the interpretation of which will depend the adjudication of one of the two issues raised in the writ petition reads as under :

"11. Probation—(1) Persons appointed to the posts in the Service shall remain on probation for a period of two years;

Provided that—

- (a) any period after such appointment spend on deputation on a corresponding or a higher posts shall count towards the period of probation;
 - (b) any period of officiating appointment shall be reckoned as period spent on probation, but no person who has so officiated shall, on the completion of the prescribed period of probation, be entitled to be confirmed, unless he is appointed against a permanent vacancy.
- (2) If, in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactory, it may dispense with his services or extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the first period of probation :

Provided that the total period of probation, including extension, if any, shall not exceed three years.

- (3) On the completion of the period of probation of a person, the appointing authority may, if his work or conduct has, in its opinion, been satisfactory :—
- (i) confirm such person from the date of his appointment, if appointed against a permanent vacancy;
 - (ii) confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy; or
 - (iii) declare that he has completed his probation satisfactorily, if there is no permanent vacancy :

Provided that if neither of the above three decisions is taken within, six months of the expiry of the original or extended period of probation, if any, then at the expiry of the aforesaid six months' period the officer concerned would be deemed to have satisfactorily completed his period of probation."

- (7) An analysis of this rule shows that :—
- (i) every person appointed to the post in service is to remain on probation for a period of two years.

-
- (ii) the period spent on deputation on a corresponding or a higher post after appointment in the service is to be treated as the period spent on probation. Likewise, the period of service rendered on officiating appointment is to be counted towards the probation.
 - (iii) If the appointing authority forms an opinion that during the period of probation the work or conduct of the officer is not satisfactory, then it can either terminate his service or extend the period of probation and thereafter pass such order which it could have passed on the expiry of first period of probation.
 - (iv) The exercise of power to extend the period of probation is subject to the condition that the total period of probation including extension shall not exceed three years.
 - (v) What is to be done on completion of the period of probation is provided in rule 11(3). Under this Rule, the appointing authority may, (a) if it is of the opinion that the work or conduct of the officer is satisfactory confirm him from the date of his appointment provided he was appointed against a permanent vacancy, (b) if permanent vacancy is not available then confirm the officer from the date when permanent vacancy occurs, (c) if the permanent vacancy is not available, the appointing authority can declare that the officer has satisfactorily completed the period of probation.

(8) Proviso to rule 11(3) contains a deeming clause i.e. a probationer is deemed to have satisfactorily completed his period of probation if the appointing authority does not take either of the aforementioned three decisions within 6 months of the expiry of the initial and the extended period of probation, if any.

(9) It is, thus, clear that the appointing authority has to take a decision on the issue of termination of the service of a probationer either at the end of initial period of probation or at the end of extended period of probation. It is also required to decide the issue of confirmation of the officer who has satisfactorily completed the period of probation. However, if no order is passed by the competent

authority at the end of initial period of probation, the officer cannot treat himself as automatically confirmed. Rather, he will be deemed to be continued on probation by employment subject to the condition that the maximum period of probation cannot exceed the outer limit of 3 years indicated in proviso to rule 11(2). Within a reasonable time from the expiry of the maximum period of probation, the competent authority is to take a decision regarding the confirmation of the officer. On a conjoint reading of Rule 11(2) and Rule 11(3), it can be said that this power has to be exercised by the appointing authority within six months of the expiry of extended period of probation. Failure of the authority concerned to pass appropriate order will bring into operation the deeming clause contained in proviso to Rule 11(3) and then the officer concerned will be entitled to claim that he has satisfactorily completed the period of probation. In other words, the appointing authority will be deemed to have divested of its power to pass an order of termination of the service of a probationer on the ground of unsatisfactory work or conduct after the expiry of the period specified in proviso to Rule 11(3).

(10) In the light of the above analysis of the relevant statutory provisions, we have to decide whether respondent No. 1 could terminate the petitioner's service after more than 3 years and 6 months of her entry in the service. It is an admitted fact that the petitioner joined service on 16th May, 1994. Therefore, the period of probation will be deemed to have commenced on 16th May, 1994. In terms of Rule 11(2) and paragraph 4 of the order of appointment, the tenure of her probation was extended for one year,—*vide* order dated 25th May, 1996. The extended period of probation ended on 14th May, 1997. At that stage, respondent no. 1 was required to pass appropriate order in terms of Rule 11(3). However, the fact of the matter is that no order was made by respondent no. 1 either on 14th May, 1997 or within next 6 months. Instead, she passed the impugned order after about 8 months of the expiry of extended period of probation. This, in our opinion, respondent no. 1 could not do because the power to terminate the service of the petitioner could have been exercised by the said respondent either at the end of the initial period of probation or the extended period of probation. In any case, respondent no. 1 did not have the jurisdiction to terminate the service of the petitioner in the purported exercise of power under Rule 11(2) after the expiry of maximum period of probation specified in proviso to Rule 11(3). We are also of the opinion that in the absence of any order passed by respondent no. 1 within the period stipulated in rule 11(3), the petitioner will

be deemed to have completed the period of probation satisfactorily and thereafter it was not permissible for respondent no. 1 to exercise power under Rule 11(2) with the assumption that she was still on probation.

(11) On the basis of above discussion, we hold that the impugned order terminating the petitioner's service is *ultra vires* to the power vested in the respondent no. 1 to terminate the services of a probationer under Rule 11(2) of the 1978 Rules and, therefore, it is liable to be declared as without jurisdiction.

(12) We also agree with the learned counsel for the petitioner that the impugned order is not only arbitrary but also suffers from malice in law. The record produced by Ms Bahri shows that after having rendered over one year's service, the petitioner applied for grant of maternity leave from 24th July, 1995 to 23rd January, 1996. The Director General, Health Services sanctioned leave to her from 24th July, 1995 to 19th January, 1996. After availing leave, she joined duty on 21st January, 1996 and continued in service till the issuance of order dated 8th January, 1998.

(13) The Annual Confidential Reports of the petitioner shows that for the first year of her service i.e. 1994-95, the reporting officer has made the following remarks :—

एच.सी.एम.एस. वर्ग-I एच.सी.एम.एस.-II, अधिकारियों तथा दन्तक सर्जनों से सम्बन्धित वार्षिक गोपनीय रिपोर्ट जांच—

(वर्ष 1994-95 की रिपोर्ट)

- | | |
|---|---------------------------------------|
| 1. अधिकारी का पूरा नाम | Dr. Neeta Mehta |
| 2. एच.सी.एम.एस. वर्ग-I, वर्ग-II में प्रवेश करने/
सहायक दन्तक सर्जन के पद पर नियुक्ति की तिथि | 16th May, 1994 |
| 3. वर्तमान नियुक्ति | Asstt. Blood Transfusion
Officer |
| 4. वर्तमान नियुक्ति की तिथि | 16th May, 1994 |
| 5. रिपोर्ट का समय | 16th May, 1994 to
31st March, 1995 |
| 6. रिपोर्ट लिखने वाला अधिकारी | Head, Blood Bank |
| 7. (1) परिश्रमी तथा क्षमता | Work according to direction |

(2) बुद्धि	Ordinary intelligent
(3) व्यवसायिक योग्यता	M.B.B.S.
(4) प्रशासकीय योग्यता	Good
(5) अन्यो के साथ व्यवहार	Good
(6) आधुनिक व्यवसायिक साहित्य का ज्ञान	Average
(7) गरीबों के साथ व्यवहार	Good
(8) ईमानदारी के बारे में ख्याति	Honest
(9) परिवार नियोजन कार्य में सक्रिय भाग	Not at record
(10) क्या लक्ष्यों के प्रति भिन्न-2 कार्यक्रमों में उपलब्धियाँ प्राप्त हैं लक्ष्यों तथा उपलब्धियों का संक्षिप्त ब्यौरा	—
(11) क्या अधिकारी कार्यालय बन्द होने के बाद और छुट्टियों के दिनों में अपने मुख्यालय पर उपस्थित रहता है या नहीं	Yes
(12) कोई अन्य टिप्पणी	—
(13) त्रुटियाँ, यदि कोई हो	—
(14) वर्गीकरण : प्रकृष्ट, बहुत अच्छा, अच्छा, औसत, औसत से कम।	Good

(Sd.) . . . ,

प्रतिहस्ताक्षरित

रिपोर्ट लिखने वाले अधिकारी के हस्ताक्षर तथा पद

(Sd.) . . . ,

निदेशक,

चिकित्सा महाविद्यालय, रोहतक।

(14) For the year 1995-96, two Annual Confidential Reports have been recorded. The first report relates to the period from 1st April, 1995 to 7th July, 1995 and the second report relates to the period from 1st July, 1995 to 31st March, 1996. In the first report, the petitioner has been rated as a 'good' officer by the reporting

officer. The remarks made by him which have been duly counter-
signed by the Director General of Health Services, Haryana are :

एच.सी.एम.एस. वर्ग-I अधिकारियों तथा दन्तक सर्जनों की वार्षिक गोपनीय रिपोर्ट फार्म :-

वर्ष.....

- | | |
|---|---|
| 1. अधिकारी का पूरा नाम | Dr. (Mrs.) Neeta Mehta |
| 2. एच.सी.एम.एस. वर्ग-I/II में प्रवेश करने/
सहायक दन्तक सर्जन के पद पर नियुक्ति की तिथि | 16th May, 1994 |
| 3. वर्तमान नियुक्ति | Asstt. Blood PGIMS, Rohtak |
| 4. वर्तमान नियुक्ति स्थान पर नियुक्ति तिथि | 16th May, 1994 |
| 5. रिपोर्ट का समय | 1st April, 1995
to 7th July, 1995 |
| 6. रिपोर्ट लिखवाने वाले अधिकारी का नाम/पद संख्या | Dr. P.K. Sehgal,
Head of Deptt. Blood Bank |
| 1. परिश्रमी तथा क्षमता | Hard worker |
| 2. बुद्धि | Intelligent |
| 3. व्यवसायिक योग्यता | Good |
| 4. प्रशासकीय योग्यता | Good |
| 5. आधुनिक व्यवसायिक साहित्य का ज्ञान | Good |
| 6. अन्यो के साथ व्यवहार | Good |
| 7. गरीबों के साथ व्यवहार | Good |
| 8. ईमानदारी के बारे में ख्याति | Honest |
| 9. परिवार नियोजन कार्य में सक्रिय भाग | — |
| 10. सामूहिक कार्यक्रमों में सक्रिय भाग जैसे
मलेरिया उन्मूलन/चेचक उन्मूलन/क्षय रोग
नियन्त्रण/स्कूल हेल्थ कार्यक्रम आदि | — |
| 11. क्या अधिकारी कार्यालय बन्द होने के बाद
और छुट्टियों के दिनों में अपने मुख्यालय
पर उपस्थित रहता है या नहीं | Yes |

12. बाढ़ रहत कार्य में कितना समय काम किया या नहीं किया	—
13. कोई अन्य टिप्पणी	—
14. त्रुटि यदि कोई हो	No
15. वर्गीकरण	Good

प्रकृष्ट, बहुत अच्छा, अच्छा, औसत, औसत से कम

स्थान : Rohtak

तिथि : 16.3.98

(Sd.) . . . ,
Head

प्रतिहस्ताक्षर,
सिविल सर्जन, रोहतक।
उपायुक्त, रोहतक की टिप्पणी :

Blood Transfusion Deptt.
Post-graduate Institute of
Medical Sciences, Rohtak.

प्रतिहस्ताक्षर,
उपायुक्त, रोहतक।
महानिदेशक स्वास्थ्य सेवायें,
हरियाणा, चण्डीगढ़ की टिप्पणी :

प्रतिहस्ताक्षर,
महानिदेशक, स्वा० सेवायें, हरियाणा।

(15) In the second report, the petitioner has been rated as 'average'. The entries made in the various columns of the second report are :

एस.सी.एम.एस. वर्ग-I अधिकारियों तथा दन्तक सर्जनों की वार्षिक गोपनीय रिपोर्ट फार्म

वर्ष 1995-96

1. अधिकारी का पूरा नाम	नीता मेहता
2. एच.सी.एम.एस. वर्ग-I/II में प्रवेश करने/सहायक दन्तक सर्जन के पद पर नियुक्ति की तिथि	—

3.	वर्तमान नियुक्ति स्थान	M.O. CHC, Kharawar
4.	वर्तमान नियुक्ति स्थान पर नियुक्ति तिथि	
5.	रिपोर्ट का समय	1st July, 1995 to 31st March, 1996
6.	रिपोर्ट लिखने वाले अधिकारी का नाम/संज्ञा	Dr. D.K. Sharma, DMO, Rohtak
1.	परिश्रमी तथा क्षमता	औसत
2.	बुद्धि	औसत
3.	व्यवसायिक योग्यता	औसत
4.	प्रशासकीय योग्यता	औसत
5.	आधुनिक व्यवसायिक साहित्य का ज्ञान	अच्छा
6.	अन्यों के साथ व्यवहार	अच्छा
7.	गरीबों के साथ व्यवहार	अच्छा
8.	ईमानदारी के बारे में ख्याति	ईमानदार
9.	परिवार नियोजन कार्य में सक्रिय भाग	बिल्कुल नहीं
10.	सामूहिक कार्यक्रमों में सक्रिय भाग जैसे मलेरिया उन्मूलन/चेचक उन्मूलन/ क्षय रोग नियन्त्रण/स्कूल हैल्थ कार्यक्रम आदि	बिल्कुल नहीं
11.	क्या अधिकारी कार्यालय बन्द होने के बाद और छुट्टियों के दिनों में अपने मुख्यालय पर उपस्थित रहता है या नहीं।	नहीं
12.	बाढ़ राहत कार्य में कितना काम किया या नहीं किया	बिल्कुल नहीं
13.	अन्य कोई टिप्पणी	—

14. त्रुटि, यदि कोई हो

15. वर्गीकरण

Good

प्रकृष्ट, बहुत अच्छा, अच्छा, औसत, औसत से कम

स्थान : Rohtak

तिथि : 13th August, 1998

रिपोर्ट लिखने वाले अधिकारी के हस्ताक्षर

प्रतिहस्ताक्षर
सिविल सर्जन,
रोहतक

प्रतिहस्ताक्षर
उपायुक्त, रोहतक।
महानिदेशक, स्वास्थ्य सेवायें, हरियाणा,
चण्डीगढ़ की टिप्पणी :

प्रतिहस्ताक्षर
महानिदेशक, स्वा० सेवायें, हरियाणा।

(16) For the year 1996-97, the petitioner has been rated as 'outstanding' except one remark in column 11 that occasionally she does not remain on headquarter after the close of office or in vacation. The entries made in the Annual confidential Report of 1996-97, which have been duly counter signed by the Director General, Health Services, Haryana are :

एस०सी०एम०एस० वर्ग-I अधिकारियों तथा दन्तक सर्जनों की वार्षिक गोपनीय रिपोर्ट फार्म।

वर्ष 1996-97

- | | |
|---|---|
| 1. अधिकारी का नाम | : डा. नीता मेहता पुत्री ब्रह्मदत्त मेहता
पत्नी डा. रमन शुक्ला। |
| 2. एच०सी०एम०एस० वर्ग-I/II में प्रवेश करने/
सहायक दन्तक सर्जन के पद पर नियुक्ति की तिथि | : 16.5.1994 |
| 3. वर्तमान नियुक्ति स्थान | : पी०एस०सी० खरावड
(सी०एच०सी० सांपला) |
| 4. वर्तमान नियुक्ति स्थान पर नियुक्ति तिथि | : 14.7.1995 |
| 5. रिपोर्ट का समय | : 1.4.96 से 31.3.97 |

6. रिपोर्ट लिखने वाले अधिकारी का नाम/पद संज्ञा : Dr. Bharat Singh,
DFWO, Rohtak
1. परिश्रमी तथा क्षमता : प्रकृष्ट
 2. बुद्धि : प्रकृष्ट
 3. व्यवसायिक योग्यता : प्रकृष्ट
 4. प्रशासकीय योग्यता : प्रकृष्ट
 5. आधुनिक व्यवसायि साहित्य का ज्ञान : प्रकृष्ट
 6. अन्यो के साथ व्यवहार : प्रकृष्ट
 7. गरीबों के साथ व्यवहार : प्रकृष्ट
 8. ईमानदारी के बारे में ख्याति : प्रकृष्ट
 9. परिवार नियोजन कार्य में सक्रिय भाग : प्रकृष्ट
 10. सामुदायिक कार्यक्रमों में सक्रिय भाग : प्रकृष्ट
जैसे मलेरिया उन्मूलन/चेचक उन्मूलन/
क्षय रोग नियन्त्रण/स्कूल हेल्थ कार्यक्रम
आदि
 11. क्या अधिकारी कार्यालय बन्द होने के : कभी-कभी नहीं रहता है।
बाद और छुट्टियों के दिनों में अपने
मुख्यालय पर उपस्थित रहता है या नहीं
 12. बाढ़ राहत कार्य में कितना काम : किया
किया या नहीं किया
 13. कोई अन्य टिप्पणी : शून्य
 14. त्रुटि, यदि कोई हो : नहीं
 15. वर्गीकरण : प्रकृष्ट (Outstanding)

प्रकृष्ट, बहुत अच्छा, अच्छा, औसत, औसत से कम

स्थान :

तिथि : 7.4.97

प्रतिहस्ताक्षर

H.C.M.S.-I
Civil Surgeon, Rohtak.

रिपोर्ट लिखने वाले अधिकारी के हस्ताक्षर

Counter signed

Director General,
Health Services, Haryana
Chandigarh.

(17) The files produced by the learned Assistant Advocate General do not contain any paper which could give an indication of the reasons which prompted the respondent No. 1 to extend the original period of probation. However, the note recorded in file no. 54/N/131 shows that the period of the petitioner's probation was extended,—*vide* order dated 25th May, 1996 on the premise that her two entries were not good. This was factually incorrect because as on 25th May, 1996 none of the reports of the petitioner contained any adverse remark. As a matter of fact, only one Annual Confidential Report of the petitioner relating to the year 1994-95 was available as on 25th May, 1996 and that was good. Two reports of the year 1995-96 have been recorded subsequently. Therefore, we have no hesitation in recording the conclusion that the decision to extend the period of probation was taken by the competent authority without application of mind.

(18) The office notings recorded in file No. 54/N/131 also show that initially the department had recommended issuance of an order that the petitioner has successfully completed the period of probation. Upon this, the Financial Commissioner, Health and Medical recorded the following note, dated 4th December, 1997:

“Pl. link the file on which probation period was extended.”

Upon this, the office reported that the file relating to extension of period of probation is not available and the same has been reconstructed. The note further says that her period of probation was extended because two reports were not good. However, as she has earned outstanding report in the next year, she is fit to be allowed to cross the probation period. The Financial Commissioner, Medical and Health did not accept the proposal of the office and she recorded the following order :

“Dr. Neeta Mehta, M.O., has got good report for the year 1994-95 and ‘Average’ report in the year 1995-96. Hence, her probation period was extended for one year. *Now, the ACR for 1996-97 of Dr. Mehta is ‘Outstanding’ but she did not maintain Hqrs. In view of the remarks given in her ACR*

for 1996-97, her services should be terminated during probation period.

(Sd.) . . . ,
(Veena Eagleton)
F.C.H.M.
29-12-1997.”

In view of this order, services of the petitioner were terminated.

(19) A careful scrutiny of the office notings and the order passed by the Financial Commissioner depicts total non-application of mind by the concerned officers/officials. The office note suggesting that the petitioner's period of probation was extended because her two reports were not good, as already mentioned above, is *ex facie* erroneous. That apart the manner in which the learned Financial commissioner dealt with the case of the petitioner leaves much to be desired. To us, it appears that the concerned officer did not bother to go through the records before she decided to dispense with the service of the petitioner. She did not notice that for the year 1995-96, two Annual Confidential Reports of the petitioner have been recorded and in one of them she has been rated as a 'good officer'. She also over looked the fact that in the second report in which the petitioner has been rated as 'average' is contrary to the instructions issued by the Government of Haryana for drawal of the Annual Confidential Reports. The learned Commissioner did not take cognizance of the fact that the petitioner was on maternity leave from 24th July, 1995 to 19th January, 1996 and the authority concerned did not have the occasion to assess her performance in respect of that period and that the average report can, at the best, be treated to have been recorded in respect of the petitioner's work from 21st January, 1996 to 31st March, 1996. In the last report (1996-97), the petitioner has been rated 'outstanding' with a minor adverse observation that occasionally she does not remain at the headquarters after office hours and during holidays. In our view, on the basis of the entries made in the Annual Confidential Reports of the petitioner, no reasonable person could form an opinion that her work and conduct was unsatisfactory warranting termination

of her service. If the competent authority had taken trouble to go through the record of the petitioner, it could not have been possible for her to direct the termination of petitioner's service. We, therefore, hold that the order terminating the service of the petitioner has been passed in a casual and arbitrary manner and, therefore, it is not only violative of Article 14 of the Constitution but suffers from malice in law.

(20) For the reasons mentioned above, the writ petition is allowed. Order dated 8th January, 1998 is quashed. For the harassment and humiliation suffered by her on account of the termination of service, the petitioner shall get costs of Rs. 10,000 from the respondents. The Government shall be free to recover the same from the officer who may be found responsible for having passed wholly arbitrary order terminating the petitioner's service.

R.N.R.

Before Swatanter Kumar, J

THAKUR DAS,—*Petitioner*

versus

CHANDER PARKASH,—*Respondent*

C.R. No. 2298 of 1998

9th July, 1998

Code of Civil Procedure, 1908—Order 39 rules 1 & 2—Petitioner seeking injunction restraining landlord from interfering in his possession over shop & plot—Written document inducting petitioner in shop does not mention plot—Rent receipts do not depict plot as part of tenancy—Status of petitioner in regard to plot would be unauthorised—Unauthorised occupant cannot claim injunction against the real owner.

Held, that where a document is executed by the parties normally the parties would be bound by the terms and conditions of that documents and cannot derive any benefit contrary to the