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R.A.No. 29 of 1989
in
O.A.No. 573 of 1989

Dt.31-3-1989.

A.K.DAWAR

VS.

E.S.I.C.

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O R D E R

1. This is an application filed by the respondents in the Original Application viz., O.A.No. 573 of 1989 for review of our order dated 17-3-1989 in that O.A.

2. The main challenge in this review application is to that part of the order in which the review applicants/respondents had been directed to permit the respondent/applicant to continue to work as Specialist in the Orthopaedic Department until the appellate authority passes its orders on the appeal to be preferred by the respondent/applicant. This order had been passed by us on the statement made by the learned counsel for the respondent/applicant that the work in the Orthopaedic department is at a standstill due to want of a specialist and that it would be in public interest to allow the respondent/applicant to continue to work there.

3. The applicants/respondents state that the order had been passed exparte without notice and without hearing the applicants/respondents. The respondents had after due enquiry removed the applicant from service on the ground that he(applicant) was negligent in not taking timely and proper effective steps to save the limb i.e., left ~~axx~~ arm of one of the patients.

Ans

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The respondent/applicant was found to be grossly negligent in the discharge of his duties and his continuance in service was more of a hazard to the patients rather than of any service to them. The applicants/respondents had directed one Dr. Charak, specialist in Surgery, in the said hospital to look after the Orthopaedic Department. The operation facilities in Orthopaedic Department are fully available at Basaidarapur. Further, one Dr. N.D. Khurana, an employee of the Corporation has been deputed to look after the Orthopaedic cases in the said hospital. For these reasons, they seek a review of the order dated 17-3-1989 passed in the main application.

4. We have heard the learned counsel for both parties. Shri Pillai, learned counsel for the respondent/applicant has filed statements signed by the Doctors of the hospital to the effect that no arrangement has been made in the hospital and the patients are still without any specialist's assistance and it is in public interest that the respondent/applicant should be continued till the appeal is disposed of. He also relied on the ratio in Charan Singh's case (1986(4)SLR108). On a consideration of the facts now placed before us, we are of the view that it is the responsibility of the Director General of ESI Corporation to ensure that proper medical facilities are provided to the beneficiaries and in discharge of that duties he has taken necessary measures in this regard. We also find that the ratio ~~xi~~ in the Charan Singh's case would not apply for the reason that, in the instant case, the applicant had been dismissed from service on grounds of gross negligence and until that order is set aside by the appellate authority or by a Court of law, it would not be in public interest to allow him to continue. In these circumstances, there is need to review the directions given in para 4 of the

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order dated 17-3-1989 in the main application viz.,
'the respondents should permit the applicant to
continue to work as specialist in the department
until the appellate authority passes its order on
the appeal to be preferred by the applicant' and
accordingly we direct that the said para be deleted.

5. Shri Pillai states that in pursuance to the
order dated 17-3-1989 the applicant has already
preferred an appeal. In the interest of justice,
we direct the applicants/respondents to dispose of the
appeal expeditiously as already directed in our order
dated 17-3-1989.

6. With the above directions, the review
application is disposed of. But in the circumstances
of the case, there will be no order as to costs.

P.K. Kartha
(P.K. KARTHA)
VC(J)

B.N. Jayasinha
(B.N. JAYASINHA)
VC(A)