
(1986) 08 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3378 of 1986

Bharti Devi

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 06-08-1986

Acts Referred:

Citation : (1987) 2 ILR (P&H) 184

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : G.R. Majithia, Sanjay Majithia and Ashok Jindal, for the Appellant;
H.S. Nagra, for the Respondent

Final Decision : Allowed

Judgement

I.S. Tiwana, J.—Having qualified the M.B.B.S., examination in, December, 1985," the Petitioner applied for one year's house job in Government Medical College, Patiala, with a view to have her post-graduation attainments. It is the undisputed position that during one year's house job, a student can have attainments in two specialties of his choice. She was selected and appointed to do House job in Anesthesia for six months, i.e., from January 1, 1986 to June 30, 1986, and she has successfully completed this term. Next she sought appointment for house job in Gynecology and Obstetrics commencing from July 1, 1986. She was duly selected and as a matter of fact she joined this course. This selection of hers was, however, made subject to a medical fitness certificate which she was to obtain from the Professor Incharge of the Gynaecology Department. As per this requirement, she obtained a medical fitness certificate (Annexure P. 2) from Dr. K.K. Sandhu, Professor of Gynaecology Department.

This certificate reads as under:

I, Dr. K.K. Sandhu, Prof. of Gynae Department do hereby certify that I have medically examined Dr. Bharti, daughter of Shri Telu Ram who has been selected for the house job for the session July and find that he/she is physically and

mentally fit according to the standard of fitness for entering in the Punjab State Medical Services except having pregnancy 28 weeks. D.L.M.P. 6th January, 1986.

Signatures of said doctor are given below;

Signature: (Sd.) Bharti.

2. Since Respondent No. 2, i.e., Medical Superintendent, Rajendra Hospital, Patiala, did not feel satisfied with the certificate of Dr. Sandhu, he made a reference to the Director, Research and Medical Education, Punjab, to find out whether 28 weeks pregnancy of the Petitioner could render her unfit for the house job for which she had been selected and appointed. The Director replied to the said query in the following manner,--vide his communication, dated July 4, 1986, (Annexure P. 3):

Pregnancy is no bar for doing house job. If Dr. Bharti Devi, daughter of Shri Telu Ram will get leave during her house job, the period of leave will be treated without honorarium and in lieu of this period she will have to complete the term of house job alter 31st December, 1986 without honorarium. This also disposes of your memo. No. 2113, dated 3rd July, 1986.

3. Still not feeling reconciled with the opinion expressed by the Director, Respondent No. 2 has terminated the appointment of the Petitioner as House burgeon in Gynaecology Department,--vide his impugned letter, dated July 18, 1986, Annexure P.4. The relevant part of this letter reads as follows:

As per criteria for selection of House Surgeon for appointment, issued,--vide Punjab Government Memo. No. 13505-5HB-II-76/, dated 22nd September, 1976, Dr. Bharti Devi is not eligible for appointment as she is temporary unfit. As such her services may be considered as dispensed with, with effect from 18th July, 1986. She should be relieved of her duties immediately under intimation to this office please.

Medical Superintendent, Rajendra Hospital, Patiala

4. The Petitioner impugns this action of Respondent No. 2 firstly on the ground that the Petitioner's pregnancy, as noticed above, does not render her physically and mentally unfit for the house job or the duties she is supposed to perform as a House Surgeon, and secondly her appointment as such is not violative of the criteria laid down by the Government,--vide its communication, dated September 22, 1976 (Annexure P.5). The stand of the Respondent-authorities, as disclosed in the affidavit of Respondent No. 2 filed on behalf of other Respondents also, is that the termination of the services of the Petitioner as House Surgeon is strictly legal and valid. Having heard the Learned Counsel for the parties at some length, I find that the stand of the Respondent-authorities must be repelled.

5. Taking up the second argument first that the Petitioner's pregnancy does not offend the criteria laid down by the Government (Annexure P.5) for selection of House Surgeon/House Physician for appointment in the hospitals attached to

medical colleges, her Learned Counsel points out that as per this criteria, a candidate is required to (i) possess the minimum qualification of M.B.B.S. from a recognised University, (ii) he should be registered with the Punjab Medical Council; and (iii) he should be physically and mentally fit according to the standards of fitness prescribed for entrance to the Punjab Medical Service (emphasis added). He urges with some amount of vehemence that the Respondent-authorities have nowhere disclosed or pointed out as to what is the prescribed criteria of physical and mental fitness for entrance to the Punjab State Medical Service. On my repeated queries, the Learned Counsel for the Respondent-authorities is not in a position to refer to any such criteria meant for entrance to the Punjab Medical Service. He, however, refers to Annexure R.2, a letter, dated August 31, 1973 from the Chief Secretary to Government, Punjab, to all Heads of the Departments laying down the criteria for the grant of extraordinary leave to female Government employees recruited on temporary ad-hoc basis for a limited period. This letter, on the face of it, has no relevancy to the controversy in issue. The instant case is not a case of leave being sought by a temporary employee of the Government. He has no other material to show as to what is the criteria of mental and physical fitness laid down for entrance to the Punjab State Medical Service. In the face of this, the Petitioner's pregnancy, as noticed above, can not be said to be violative of the eligibility criteria for her appointment as a House Surgeon/House Physician in the Medical College.

6. Again, I am inclined to agree with the Learned Counsel for the Petitioner that the Petitioner's pregnancy, noticed above, cannot be said to have rendered her unfit physically or mentally to be appointed to the job from which she has been removed,--vide Annexure P.4. It is no doubt true that during pregnancy many demands are made on the maternal organism consequent upon the rapid growth of the fertilised ovum and to meet these demands of the growing foetus, the maternal system has to undergo certain changes, yet the fact remains that pregnancy is something very natural and normal that can happen to a normal young woman. How can such a normal and natural happening be said to have rendered that woman physically and mentally unfit to hold a job in Government service. On the other hand, sterility or incapacity to conceive and give birth to a living baby is taken as an abnormality or a disease with a woman. Under the circumstances, Respondent No. 2 would have done well to accept the opinion of Respondent No. 3 as contained in Annexure P. 3 making the appointment of the Petitioner subject to the condition suggested, i.e., If Dr. Bharti Devi, daughter of Shri Telu Ram will get leave during her house job, the period of leave will be treated without honorarium and in lieu of this period, she will have to complete the term of House Job after 31st December, 1986 without honorarium". Terminating her services on the above-noted score appears to be utterly unsustainable.

7. For the reasons recorded above, I allow this petition with costs and while setting aside, Annexure P.4, direct that the Petitioner should be allowed to continue her job as a House Surgeon in Gynaecology Department to which she

had been admitted, with effect from July 1, 1986. She would have her costs from Respondent No. 2 alone which I determine at Rs. 500.