
(2012) 01 DEL CK 0207

In the Delhi High Court

Case No : Writ Petition (C) No. 4132 of 1999

Lt. Mrs. C. Reethama Joseph

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Citation : (2012) 4 AD 62 : (2012) 186 DLT 388 : (2012) 3 ILR Delhi 455

Hon'ble Judges : J.R. Midha, J;Anil Kumar, J

Bench : Division Bench

Advocate : E.J. Varghese, for the Appellant; Ankur Chhibber, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Anil Kumar, J.—The petitioner has sought the issuance of an appropriate writ for quashing the order of releasing the petitioner from the Military Nursing Service on the alleged ground of her marriage and also for declaring that the Rule/Order which provides for the release of the female commissioned officers of the Military Nursing Service on the ground of their marriage as unconstitutional, invalid and void. The petitioner has also sought for directions to the respondents to reinstate her in the Military Nursing Service without any break in service and to pay her the arrears of salary and allowances from the date of her release till the date of her reinstatement

2. The brief facts to comprehend the dispute between the parties are that the petitioner was selected for probationer Nurses Course in the year 1979 and on completion of three years training, she was granted commission w.e.f. 28th December, 1982. The petitioner was posted at the Military Hospital, Jalandhar on 28th December, 1982 where she worked for 3 years and thereafter, she was transferred to the Military Hospital, Ranikhet.

3. On 17th August, 1986, the petitioner got married to Sh. M.K.Joy which, according to the petitioner, was duly informed by her to the concerned authorities. The petitioner alleged that she was allowed to continue in the service

for two years and thereafter, after the expiry of the extended period from 17th August, 1986 to 16th August, 1988, she was released from the Military Nursing Service, on the ground of her marriage, on 3rd October, 1988. A certificate dated 17th November, 1988 was also issued to her and in that certificate her services were shown to be satisfactory.

4. The movement order releasing the petitioner from the service is reproduced as under:-

1. NR-17600 Y Lieut (Mrs.) Reethama Joseph, MNS of this hospital, has been relieved from Military duties w.e.f 03 October, 1988 (03 Oct, 88 (AN) for release from service.

2. She will leave this hospital on 03 Oct. 88 (AN) and will be SOS/SORS w.e.f. 04 Oct. 88 (FN).

3. Provision of AI 2/S/74 regarding acceptance of Civil employment after release have been explained to her.

4. In case of change of address after release, she will inform the same to Army HQ. Med Date/MPRS (O) DGHS-4 CDA (O) Phe and this office also.] 5. Her address after release will be as under:- REETA JOY C/O.MRS.C.D.JOSEPH CHITTETHAZHATHU HOUSE S.AMBALLOOR P.O. ERNAKULAM (DIST) KERALA-682 315 Auth: RAKSHA MANTRALAYA KARYALAYAM MAHA NIDESHA, SASSTHRA SENAL CHIKITSA SEVA, NEW DELHI-110001. Letter No.17600/DGAFMS/MNS Dated 05 Sep.88. Sd/- (P.M.Velankar) Lt.Col. Offg.Commanding Officer

5. According to the petitioner, her release from the service was on account of her marriage. She contended that there was no Court Martial or any other proceedings initiated against her and she had an excellent service record. She further asserted that neither was any

warning given to her nor was any adverse report made in the Annual Confidential Reports. The petitioner asserted that the age of retirement in respect of officers of the Military Nursing Officers is 55 years up to the rank of Lieutenant Colonel and thereafter, the age of retirement varies depending on the rank.

6. The Military Nursing Service was constituted under the provisions of the Military Nursing Service Ordinance, 1949. u/s 5 & 6 of the said Ordinance, any citizen of India, any woman above the age of 21 years is eligible for appointment as an officer in the said service. The provisions of the said Ordinance also contemplate that all the members of India Military Nursing Service shall be commissioned and shall be appointed as officers of the Indian Nursing Service by the Central Government by Notification in the Official Gazette. The provisions of the Indian Army are applicable to the Military Nursing Service by virtue of Section 9 of the said Ordinance.

7. The plea of the petitioner is that after her marriage, she had applied for extension of the service by two years which was granted. After expiry of the two

years extension period granted to her, she applied again in July, 1988 but further extension was rejected and she was discharged from the service on the ground of marriage.

8. The petitioner contended that the Rules/Orders issued by the Director General of Armed Forces contemplating the termination or release of a female officer from the Medical Nursing Service on the ground of marriage has no rationale, as marriage does not incapacitate an officer from discharging her duty. According to the petitioner, releasing her from the Military Nursing Service on the ground of her marriage is unconstitutional and offend her fundamental rights under Article 14, 15, 19 and 21 of the Constitution of India.

9. The petitioner also alleged discrimination on the ground that a number of other Military Nursing Officers who got married and had children after their marriage have been retained in the service. The petitioner gave the instances of Capt. Sathi Kumari; Capt. Pareira; Maj. Leelavathi; Capt. B.Bhattacharya and Capt. S. Chakravarty. The petitioner asserted that she has been discriminated in the facts and circumstances. The petitioner also referred to the Defence Services Regulations (Revised Edition), 1962. Regulations No.102 contemplates as follows:-

An Officer will not be permitted to remain in the service, if at any time during the first three years from the date of his commission, his retention is considered to be undesirable.

10. The petitioner further asserted that she could not have been released after having served for almost six years after her commission under Regulation No.102 of the Defence Service Regulations. Reliance was also placed on Rule 14 & 15 of the Army Act, 1950.

11. The petitioner contended that she was never informed of any adverse entry made against her in her ACR and that the reason given in her discharge-release order is marriage and also that no entry regarding the same was ever communicated to her, nor was any warning given to her informing her regarding areas in which she was required to improve. The petitioner also referred to an unstarred question No.1408 raised in the Parliament on 21st November, 1988 in answer to which it was stated that out of 45 married nurses whose tenure was not extended due to their unsatisfactory record, 16 of them had continued on account of stay orders granted by the Court.

12. According to the petitioner, even though marriage was not given as reason for her release, there could have been no other reason for the petitioner's release except her marriage, since the Army Service Certificate issued on 17th November, 1988 categorically stipulated that the service of the petitioner which included the two years of extension period was satisfactory. She pleaded that she had married in the year 1986 and that the concerned authorities were duly intimated about it and even Part-II orders were published by the Military Authorities. It is urged that there is no justifiable ground to release the petitioner

after two years of her marriage. The petitioner also relied on the decision of the Supreme Court in the case of Lt.(Mrs.) Indra Kumari Kartiayani v. The Maha Nideshak, Raksha Mantralaya, Civil Appeal No.5025 of 1990, decided by order dated 30th October, 1990. The petitioner further disclosed that she had also filed a writ petition being W.P.(C) 416 of 1989, titled as Lt.Mrs.C.Reethama Joseph v. Union of India & Ors., in the Supreme Court of India, which was dismissed by order dated 1st April, 1997, however, the petitioner was given the right to challenge the order of release before the appropriate authority in accordance with the law. The order passed by the Supreme Court on the writ petition of the petitioner is as under:-

The petitioner, in this writ petition challenges the impugned order of release from service of the respondent on October, 1988. This writ petition was filed under Article 32 of the Constitution of India challenging the vires of rules which enable the respondent to release the petitioner from service after marriage in accordance with the order of the President of India dated January 16, 1968. Clause III of the said order of President reads as follows:-

The MNS (Regular) officers may be permitted to remain in service even after marriage at the discretion of the DG AFMS for a period of 2 years at a time. The cases of such married officers as are retained will also be reviewed by the DG AFMS periodically after every two years. This relaxation of the normal rules will be a temporary measure and the position will be reviewed by 1st January, 1970.

Though the constitutional validity of this rule/order is challenged, we do not think that argument can be accepted in the light of the earlier order of this Court under identical circumstances in C.A No.5025/90 Lt. (Mrs.) Indira Kumari Kartiayoni vs. The Maha Nideshak, Raksha Mantralaya, Shastra Sena Chikitsa Seva, New Delhi dated October 30, 1990.

However, the learned counsel seeks permission to challenge the order of release in accordance with the law before the appropriate authority.

Accordingly, we are dismissing the writ petition and we reserve the right of the petitioner to challenge the order of release dated October 1988 before the appropriate authority in accordance with law.

The writ petition is dismissed with no costs.

13. After the writ petition of the petitioner was dismissed by the Supreme Court by order dated 1st April, 1997, the petitioner filed the present writ petition on 2th July, 1999. The respondents have contested the writ petition contending, inter-alia that the writ petition should be dismissed on the ground of delay and laches as the petitioner was released from the service in the year 1988, whereas the present writ petition was filed in July, 1999. The respondents asserted that no explanation has been given for the delay of two years even after the dismissal of her writ petition by the Supreme Court, granting her right to challenge her release before the appropriate authority.

14. The respondents categorically asserted that the petitioner was employed after her marriage on a contractual basis and that her contract was for two years. The respondents were at liberty to renew or enter into a fresh contract with the petitioner based on their requirement and her past performance. The contractual service of the petitioner came to an end in the year 1988. It was noticed that the performance of the petitioner was below average and that the petitioner had not satisfied the stipulated criteria. Therefore, her contract was not renewed and she was released from service on 3rd October, 1988. On 17th August, 1986, the petitioner had submitted her willingness for retention in the service for a period of two years on contractual basis. The petitioner had been graded as below average by her superior officers, and therefore, she was released from the service on expiry of her contract in October, 1988. Since the petitioner had acquiesced to the terms and conditions stipulated during the period of initial engagement and also during her extension period after August, 1986, therefore, the petitioner is estopped from challenging the validity of the Rules/Clauses permitting the said termination.

15. The respondents also relied on the criteria for retention/further retention of the officers of the Military Nursing Service. The relevant criteria as stipulated in the notification dated 6th March, 1987 is as under:-

(a) Should have put in a minimum of two years' service after commission at the time of marriage (applicable only for cases of initial retention).

(b) Should have had a consistent high average (6) performance as reflected in the ACRs for the three years preceding the year in which the officer gets married or due for review for further retention in service on marriage ground.

(c) Should have been graded average or above in all the following essential qualities in the ACRs rendered on the officer during the three years preceding the year in which the officer gets married or due for review for further retention in service on marriage ground:-

(i) Integrity

(ii) Sense of duty

(iii) Discipline

(iv) Patient care

(v) Administrative ability

(vi) Loyalty

(vii) Professional ethics

(viii) Professional knowledge

(ix) Initiative

(x) Self-confidence

(xi) Delegation of responsibility

(d) Should have been recommended by all the officers in the chain of reporting for retention/further retention. Provided that where an officer fulfils all other criteria except under this sub para, such a negative recommendation must be accompanied by detailed reasons for the same supported by solid evidence like repeated written warning etc.

(e) Should not have been placed on "Adverse Report" in accordance with the provisions of Paras 15 to 19 of AO 121/78.

(f) Should be in Med Category not lower than S1H2A2P2E2. (g) Should not be undergoing a course of instruction at the time of getting married.

5. The above may kindly be brought to the notice of all nursing officers and be given wide publicity.

6. The above provision will become effective with immediate effect.

7. Kindly acknowledge.

16. The respondents had filed the counter affidavit dated 1st December, 1999 of Maj. Uma, raising the pleas and contentions as stipulated hereinabove. The petitioner did not file any rejoinder to the counter affidavit filed on behalf of the respondents and did not refute the plea of delay and laches and some other pleas which has been raised in the counter affidavit and which had not been dealt with in the petition. The petitioner had, however, filed the copy of the counter affidavit filed by the respondents dated September, 1994 to her writ petition being W.P.(C) No.416/1990 before the Supreme Court and a copy of the representation dated 22nd February, 1998 made by the petitioner to the Secretary, Ministry of Defense, South Block.

17. This Court has heard the learned counsel for the parties in detail and has also perused the writ petition and the counter affidavit filed on behalf of the respondents before this Court and the copy of the counter affidavit filed by the respondents before the Supreme Court to the writ petition of the petitioner which was dismissed by order dated 1st April, 1997.

18. The Supreme Court while dismissing the writ petition of the petitioner had held that the constitutional validity of the Rule and Order challenged by the petitioner cannot be accepted in the light of the order of the Supreme Court in the case of Lt.(Mrs.) Indra Kumari Kartiayani. From the order dated 1st April, 1997 dismissing the writ petition of the petitioner before the Supreme Court, it is apparent that the validity of the order of the President of India dated 16th January, 1968 was upheld which entailed that as per Clauses III of the said President's order, the Military Nursing Service (Regular Officers) could be permitted to remain in service even after marriage at the discretion of the Director General, Armed Force Medical Service for a period of two years at a

time. The said order also contemplated that the cases of married officers would be reviewed by the Director General periodically after every two years.

19. In *Indra Kumari Kartiayani* (supra) the Nursing officer was relieved on account of her marriage. After taking into consideration her record of performance, it was held that her performance was sufficiently good and she was entitled to be retained in the service. The Supreme Court had, therefore, directed that the respondents should have given the said Nursing officer the chance to prove her ability in the two years following the marriage and in case, if she succeeded in proving that she was good enough to remain in service, notwithstanding the marriage, she was entitled to be retained in the service in terms of the President's order. As no opportunity was given to the Nursing Officer *Indra Kumari*, her petition was allowed and the respondents were directed to reinstate her for a period of two years and at the end of two years or during that period if the respondents were to find, that she was qualified, then she was to be retained permanently and she would have been entitled to the benefit of continuity of service. However, the arrears of salary from 7th October, 1988 till her reinstatement were not granted. The case of the petitioner is apparently distinguishable as the petitioner got married on 17th August, 1986 and after considering her case in accordance with the criteria for further extension in service after marriage, she was granted extension for the period of two years from 17th August, 1986 to 16th August, 1988. After the expiry of the extension period of two years, since her performance was found to be WP(C) No.4132/1999 Page 14 of 16 below average, she was released from 3rd October, 1988 which is inconsonance with the ratio of the Supreme Court judgment relied on by the petitioner.

20. The petitioner pleaded that she has been released solely on the ground of her marriage, therefore, the release order cannot be sustained. However, since the performance of the petitioner was found to be below average during the period of extension of two years from 17th August, 1986 to 16th August, 1988, the respondents were justified in not extending her extension any further. Consequently, the order of the respondents releasing the petitioner from the service is not liable to be set aside as has been prayed for by the petitioner. It cannot be inferred from the facts and circumstances that she has been released from the service solely on the ground of her marriage, nor can it be held that the Presidential order and other orders referred to the petitioner are unconstitutional, invalid or illegal. The petitioner is not entitled to be reinstated in the Military Nursing Service nor is she entitled for payment of salary and allowances as has been claimed by her.

21. The plea of the respondents that the petition is liable to be dismissed on account of delay and laches, also has merit. The petitioner was released in the year 1988 and she had filed the writ petition before the Supreme Court in the year 1989 which was disposed of by order dated 1st April, 1997. The petitioner had thereafter, filed a representation dated 22nd February, 1998, however, the

petitioner has not disclosed as to why she had to wait for almost 10 months for making a representation on 22nd February, 1998 and for another 17 months to file the present writ petition. The petitioner has not given any satisfactory reason for the delay in filing the present writ petition after she was permitted to challenge her release order on dismissal of the writ petition by order dated 1st April, 1997.

22. It has been held in a number of cases by the Supreme Court as also this Court that stale claims should not be entertained by the Courts and failure to make out grounds to condone the delay in seeking remedy in law is sufficient in itself to oust the petitioner. In this connection, reference can be made to the following precedents:

- (i) Rajalakshmiah v. State of Mysore AIR 1967 SC 993
- (ii) Jagdish Narain Maltiar Vs. The State of Bihar and Others,
- (iii) C.B.S.E. Vs. B.R. Uppal and Others,
- (iv) Savitri Sahni Vs. Lt. Governor, NCT of Delhi and Others,

The writ petition is therefore, also liable to be dismissed on the ground of delay and laches.

23. In the facts and circumstances the writ petition, is, therefore, without any merit, and it is dismissed. The parties are, however, left to bear their own costs.