
(2005) 05 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 780 of 2002

Manju Menaria (Smt.)

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 02-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 4 RLW 2645 : (2005) 3 WLC 42

Hon'ble Judges : N.N. Mathur, J; Manak Mohta, J

Bench : Division Bench

Advocate : P.P. Choudhary, for the Appellant; H.R. Soni, Addl. Government Advocate, for the Respondent

Judgement

N.N. Mathur, J.—This special appeal is directed against the order of the learned Single Judge dated 30th July, 2002, whereby, the appellant has been denied back-wages and continued in service irrespective of the fact that the order of termination is found to be illegal.

2. The necessary facts giving rise to the instant special appeal are that the appellant has to her credit the degree of B.A. and B.Ed. In the year 1996, on her being selected, she was given appointment on the post of Primary School Teacher Grade III by order dated 21.12.1996. On being examined, she was declared medically fit by Incharge Medical Officer, Nimbahera, vide certificate dated 31.12.1996. As per the order of Vikas Adhikari, Panchayat Samiti, Nimbahera, she joined her duties at Primary School, Sangaria on 1.1.1997, Curiously the Vikas Adhikari, Panchayat Samiti, Nimbahera, at the relevant time, observed that the appellant was carrying pregnancy, as such, he issued a notice dated 12.2.1997 stating therein that as per the medical certificate, the physical deficiency was shown as NIL, but it was felt that she was carrying pregnancy. Thus, she was called upon to show cause as to why proper proceedings be not initiated against her for obtaining appointment by fraud. She was given an opportunity to submit a fresh medical certificate of a Female Medical Officer

within a period of three days. In compliance of the aforesaid direction, a medical certificate dated 13.2.1997 Annexure P/6 was submitted by the appellant. The certificate issued by the Gynecologist reads as under:

"It is certify that Manju Menariya having pregnancy, according to her statement her LMP is 17.8.96 and expected date of delivery will be 24.5.97.

At present according to examination she is pregnant and size of uterus is 24 Vol. i.e. 6 months pregnancy otherwise she is normal and fit to do her duties."

3. On receiving the medical certificate dated 13.2.97 Annexure P/6, the respondent Vikas Adhikari, Panchayat Samiti, Nimbahera terminated her services by order dated 18.2.97 holding her guilty of concealing material fact of pregnancy from the department. The appellant challenged the order of termination by way of writ petition under Article 226 of the Constitution of India.

4. The learned Single Judge allowed the writ petition and set aside the order of termination by order under appeal. The learned Single Judge observed that there is no provision of law which debars a pregnant lady to be appointed on the post of Teacher Grade III. Merely because in the medical certificate Ex.P/3 dated 31.12.96, she was not shown pregnant and later on she was found pregnant does not lead to the conclusion that she concealed material fact from the Vikas Adhikari. The learned Single Judge has observed that becoming pregnant is usual phenomena of a married lady and from this point of view also, if she is found pregnant, her services cannot be terminated merely on the ground that she was pregnant. It further appears that the lady doctor by medical certificate dated 13.2.97 had also opined that she was fit to join her duties. The learned Single Judge has also explained physical deficiency, which means a deficiency pertaining to one's body and the fact of becoming pregnant does not amount to deficiency pertaining to women's body. The learned Single Judge has observed as follows:

"Thus, it is, therefore, held that pregnancy by itself cannot be regarded or termed as physical deficiency and abnormality in one's woman's body as it is an usual natural biological outcome of a married woman's life."

5. The learned Single Judge has also found the order of termination in violation of the statutory rules and the principles of natural justice. Accordingly, the learned Single Judge allowed the writ petition and directed to reinstate her. However, on the point of back-wages, the learned Single Judge following the principle of "no work no pay", deprived her of back-wages. She has also not been given seniority in the service. However, a compensation has been awarded to her in the sum of R's. 10,000/- in place of back-wages.

6. The instant special appeal has been preferred aggrieved by part of the order, refusing to grant back-wages. Having heard learned Counsel for the parties, we are of the view that the order of termination on its face, is not only arbitrary or perverse but obnoxious as well. It exhibits mental deformity of the Vikas Adhikari, Panchayat Samiti, Nimbahera, who passed such an unreasonable and

arbitrary order which shocks the conscience of the Court. The act of the respondents terminating the services of the appellant is not only a callous and cruel act but an open insult to Indian womanhood-the most sacrosanct and cherished institution. We are constrained to observe that such a course of action is extremely detestable and abhorrent to the notions of a civilised society.

7. The Hon''ble Apex Court in AIR India Vs. Nergesh Meerza and Others, , dealing with the pregnancy as a disability, observed as follows:-

"Pregnancy also is not a disability but one of the natural consequences of marriage and is an immutable characteristic of married life."

8. We are in complete agreement with the view of the learned Single Judge to that extent. However, the learned Single Judge has committed error in applying the principle of "no work no pay" in the facts of the case. It is well established that normally in a case of unjustified termination of services, workmen are entitled to relief of reinstatement with full back-wages. Reference be made to Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, . No special reason has been pointed out to deprive the appellant of back-wages. She has not only been deprived of back-wages but also of seniority.

9. Consequently, we allow the special appeal. The order of the learned Single Judge dated 30th July, 2002 is modified. The order of termination dated 18.2.97 is quashed and set aside. It is declared non est, as if it was never passed. The appellant will be entitled to full back-wages as if she is continued in service. An amount of Rs. 10,000/- will be recovered from the salary of respondent-Vikas Adhikari, Panchayat Samiti, Nimbahera, who passed the order of termination. The amount shall be deposited with the State Women Rights Commission, Jaipur. The Commission will utilise the said amount of Rs. 10,000/- for the treatment of mentally sick persons, who suffers from gender prejudice, like the Vikas Adhikari, Panchayat Samiti, Nimbahera at the relevant time. A copy of order be sent to the Collector, Chittorgarh and Chairman, State Women Rights Commission, Jaipur.