

(2010) 04 UK CK 0057
In the Uttarakhand High Court

Rajkumari Maria

APPELLANT

Vs

Chief Medical Officer and Another

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Citation : (2010) 2 UPLBEC 28

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Judgement

Tarun Agarwala, J.—Heard Shri Shobhit Saharia, the learned Counsel for the petitioner and Shri Subhash Upadhyaya, the learned Brief Holder for the respondents.

2. The petitioner was initially appointed as an Auxolary Nurse Midwife (hereinafter referred to as ANM) on 3rd August, 1982 and worked till 8th July, 1993 when she resigned on account of certain family problems. Her resignation letter was duly accepted by the Chief Medical Officer from the period 1st February, 1997 to 31st December, 2002. The petitioner served as a Midwife in the Indian Army w.e.f. 1st August, 2002. The petitioner again joined as an ANM on a contract basis by an order of the Chief Medical Officer, Bageshwar and continued to work on a contract basis till 9th January, 2006.

3. In the year 2005, the petitioner made a representation that she should be regularized on the post of ANM. This representation was made on the basis of a Government Order dated 24th August, 2004 which stipulated that all ANM workers working on a contractual basis would be regularized provided they hold a health certificate for a period 1986 to 1991. The representation of the petitioner was duly considered on the basis of the aforesaid Government Order and the respondents issued an order dated 19th December, 2005 appointing the petitioner on a regular basis in a permanent vacancy under the U.P. Medical Health & Family Welfare Department Health Workers & Health Supervisors (Male and Female) Service Rules, 1997.

4. Based on the aforesaid order dated 19th December, 2005, the petitioner was issued a formal order dated 6th January, 2006 appointing her on a temporary basis.

5. The aforesaid facts as narrated above is not disputed by the respondents. The petitioner's services was, however, dispensed with by an order dated 05/12/2006 on certain instructions being issued by the Director General. The petitioner's services was dispensed by invoking the provision of U.P. Temporary Government Servants (Termination of Service) Rules, 1975. The petitioner, being aggrieved by the order of termination, has filed the present writ petition.

6. Having heard the learned Counsel for the parties, this Court is of the opinion that the impugned order cannot be sustained. Admittedly, the petitioner was given a substantial appointment on a temporary basis on a permanent vacancy under the Rules of 1997. A copy of the said Rules has been placed by the learned Brief Holder which has been taken on record. Rule 18 sub-clause 3 of the said Rules of 1997 provides that a person appointed on a temporary post could be removed, if the authority finds that the services of the incumbent was not satisfactory. The respondents have invoked the Rules of 1975 which, in my opinion, is not applicable. Rule 2 of the Rules of 1975 defines temporary servant as under:

2. Definition. ? In these rules ?temporary service? means officiating or substantive service on a temporary post, or officiating service on a permanent post under the Uttar Pradesh Government.

7. Admittedly, from a perusal of the aforesaid Rules, it is clear that the petitioner was not working on a temporary service but was appointed on a clear vacancy on a substantive post. This Court is of the opinion that the Rules of 1975 is not applicable. Consequently, the basis of invoking the provision of Rule 3 of Rules of 1975 cannot be invoked for dispensing the service of the petitioner. On this short ground, the impugned order cannot be sustained and is quashed. The writ petition is allowed. The respondents are directed to take back the petitioner in service on the post of Auxolary Nurse Midwife.