

(2010) 11 SHI CK 0139
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 6496 of 2008

Smt. Asha Kumari

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Citation : (2010) 11 SHI CK 0139

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—Petitioner has prayed for the following reliefs:

- (1) That the Annexure A-4 being passed without following the law and equity may kindly be quashed and set-aside.
- (2) That the respondents be directed to allow the applicant to rejoin her service as Volunteer Teacher in Govt. Primary School Chhek, Block Chadhiar.
- (3) That the applicant may kindly be allowed to join her services with all consequential benefits including her salary and seniority and back wages.
- (4) Records of the case may be summoned.
- (5) Cost of the application be awarded to the applicant.
- (6) Any other relief or order to which the applicant is considered justified and proper may also be allowed.

2. Letter dated 23.6.1999 (Annexure A-4) reads as under:

To Smt. Asha Kumari Sen, w/o Sh. Jitender Kumar Sen, Village & P.O. Chauntra, Teh. Jogindernagar (Mandi). Subject: Regarding Smt. Asha Kumar, Volunteer Teacher Govt. Primary School Chhek. Memo:

In response to your representation dated 29.4.99 you are hereby informed that

as per the record of the Block Primary Education Officer/Head Teacher you neither got leave sanctioned nor you took permission regarding station leave. This is for your information.

Sd/- Distt. Pry. Education Officer, Kangra at Dharamsala. 3. It is not in dispute that petitioner was working as volunteer teacher under the scheme formulated by the Government known as H.P. known as Volunteer Teacher Scheme 1991. She was appointed vide office order dated 4.2.1992 (Annexure A-1).

4. It also cannot be disputed that w.e.f. 1.1.1995 petitioner did not report for duty. From the record it is not evident as to whether petitioner had informed the authorities that she was to proceed on maternity leave. Evidently no such permission was sought before proceeding on leave. Petitioner remained continuously absent from service till 15.5.1995 when she reported to the Block Primary Education Officer, Chadhiar. She also furnished the medical certificate to show that she was in family way during this period. She was not allowed to join. Consequently she made representation (Annexure A-3) which was rejected in terms of letter (Annexure A-4) reproduced hereinabove.

5. It is the petitioner's contention that her services were neither terminated nor was she afforded any adequate opportunity of hearing/representation before the respondents took any action.

6. From the reply filed by the State it is evident that petitioner willfully remained absent from duty w.e.f. 1.1.1995.

7. Mr. Rakesh Jaswal, learned Counsel for the petitioner has relied upon the decisions of the Apex Court in *Scooters India Ltd. v. M. Mohammad Yaqub and Anr.* (2001) 1 SCC 61 and *Laxman Dundappa Dhamanekar and Another Vs. Management of Vishwa Bharata Seva Samiti and Another*,

8. In my considered view ratio laid down therein is not applicable to the instant facts. There the Apex Court was dealing with a case of an employee who was either on probation or permanently absorbed. The Court was dealing with the case where interpretation of Standing Order 9.3.12 was in issue.

9. In the instant case respondents had floated a scheme to meet up the shortfall of teachers in the schools set up in far flung/remote areas of the State. Volunteer Teachers were to be posted where single J.B.T. teacher was working. They were to assist them. Petitioner undoubtedly remained absent without prior leave/intimation thus defeating the very object and purpose which was sought to be achieved under the Scheme. It was a case of abandonment. Further from Annexure A-3 it is evident that petitioner approached the respondents only after policy of regularisation was introduced by the State Government. Petitioner kept silent for more than four years.

10. From the record it cannot be said that any legally enforceable right of the petitioner stands violated. Consequently present petition stands dismissed.