

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

Original Application No.203/00914/2018

Bilaspur, this Thursday, the 21st day of November, 2019

HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MR. B V SUDHAKAR, ADMINISTRATIVE MEMBER

Dr. Himeshari Verma, W/o Dr. Nilay Mozarkar, aged about 35 years, Occupation Sr. Resident, Dept. of General Medicine, AIIMS, Raipur R/o B-16, Ralas Enclave, Dindayal Upadhyay Nagar, Raipur (C.G.) 492009
-Applicant

(By Advocate – S/Shri Varun Kumar Sharma and Sanjay Agrawal)

V e r s u s

1. All India Institute of Medical Sciences, Raipur through its Dean, Tatibandh, Raipur (C.G.) 4920099.

2. Senior Administrative Officer, All India Institute of Medical Sciences, Tatibandh Raipur (C.G.) 4920099.

3. Director, All India Institute of Medical Sciences, Tatibandh, Raipur (C.G.) 4920099
-Respondents

(By Advocate – Shri B.P. Rao)

O R D E R (O R A L)

By Ramesh Singh Thakur, JM.

This Original Application has been filed by the applicant against the order dated 18.08.2018 (Annexure A-1), whereby services of the applicant have been terminated.

2. The applicant has, therefore, sought for the following reliefs:

8.i. This Hon'ble Tribunal may be kind enough to quash the impugned order dated 18/08/2018 (Annexure A/1).

ii. This Hon'ble Tribunal may be kind enough to direct the non-applicants to reinstate the applicant to the post of Senior Resident (Medicine) AIIMS, Raipur.

iii. Any other order that may be deemed fit and just may also kindly be made in the interest of justice.”

3. Brief facts of the case are that the applicant was selected and appointed to the post of Senior Resident with the respondent-Institute on 16.01.2018 (Annexure A-2). The appointment of the applicant has been made under the Residency Scheme of the Government of India. On 05.04.2018 (Annexure A-5), a show cause notice was issued to the applicant stating therein that she did not attend patient call duty as per the duty roster. On 06.04.2018 (Annexure A-6) another show cause notice was issued to the applicant alleging not attending Sickle Cell OPD on 05.04.2018. The respondents have issued duty roster for the month of May, 2018, June, 2018 and July, 2018. However, the applicant was forced to work 24/7. Due to continuous work pressure, the applicant suffered health complication and was taken to the Hospital on

29.06.2018 (Annexure A-12), where it was declared that the applicant is pregnant and her pregnancy is complicated. The applicant informed regarding her complicated pregnancy to the authorities. However, she was not granted medical leave, which is available to the applicant under the Maternity Benefits Act, 1961.

4. The applicant submits that she was not able to keep up good health due to pregnancy related complications. Despite being aware of the applicant's condition, the authorities did not allow the applicant to take leave and with an intent to get rid of the applicant, a show cause notice was issued on 25.07.2018 (Annexure A-14). The applicant replied to the aforesaid show cause notice mentioning regarding her pregnancy. Due to continuous work pressure and harassment, the applicant again collapsed and was declared unfit by the AIIMS itself. She was recommended 15 days' bed rest from 07.08.2018 (Annexure A-16). However, the respondents have issued the impugned termination order on 18.08.2018 when the applicant was on medical leave.

5. The respondents, in their reply, have submitted that the applicant was appointed as Senior Resident under Residency

Scheme 1992 vide offer of appointment dated 16.01.2018 (Annexure A-2) for a period of 11 months from the date of joining the service on 02.02.2018. Since the applicant was negligent in discharging her duties resulting great inconvenience to patients as well as to the Institution. Her performance was not satisfactory enough to further continuation in service. The applicant was served three show cause notices dated 05.04.2018, 06.04.2018 and 25.07.2018. She did not submit any explanation to first two show cause notices and her reply to third show cause notice was not found satisfactory. It has been further submitted by the respondents that if the applicant was feeling any inconvenience in discharging her duties, she could have applied for Maternity Leave as per the Scheme, which she never applied.

6. Heard learned counsel for the parties and perused the pleadings and the documents available on record.

7. From the pleadings, the facts regarding the engagement of the applicant as Senior Resident and also the fact regarding issuance of show cause notice dated 25.07.2018 (Annexure A-14) is not disputed. It is also not disputed that in pursuance to Annexure A-14, the applicant has made the explanation vide

Annexure A-15. In her explanation, the applicant has specifically submitted that the senior Doctors have the information regarding the pregnancy of the applicant and the applicant has orally requested for the light duties. It has also been averred in her explanation that due to pregnancy and heavy duty, there is some adverse effect on her health.

8. We have perused the impugned order dated 18.08.2018 (Annexure A-1) in which the respondent department have invoked the provisions of CCS (Temporary Service) Rules, 1965 and have terminated the applicant forthwith. Though, as per the impugned order, services of the applicant have been terminated forthwith, but we do not find any reasons in the impugned order. We agree with the contention put-forth by learned counsel for the applicant that Annexure A-1 is a non speaking order as no reasons have been assigned while terminating the services of the applicant. In her explanation to the show cause notice, the applicant has mentioned the fact regarding her pregnancy and difficulties in discharging the duties. Therefore, it was incumbent on the part of the respondents to deal with the explanation given by the applicant while issuing the impugned order.

9. The applicant has submitted that Section 12 of the Maternity Benefits Act, 1961 ought to have been properly implemented in the case of the applicant especially when the respondent department were promptly intimated orally earlier and thereafter in writing vide Annexure A-15. For this purpose, learned counsel for the applicant placed reliance on a decision of Hon'ble High Court of Delhi in the case of **Dr. Vishakha Kapoor vs. National Board of Examination & Anr.** in LPA 15/2009 decided on 03.03.2009, wherein the applicability of the Maternity Benefits Act, 1961 has been dealt with.

10. The learned counsel for the respondents contended that the condition of service is to be seen as per the offer of appointment and service is contractual in nature and for 11 months and can be extended after looking to the performance of the applicant and it can be terminated on the basis of gross negligence. However, we find that though the allegation of gross negligence has been levelled against the applicant in the show cause notice, but the explanation given by the applicant has not been dealt with before issuing the impugned termination order. Needless to say that so far as the Maternity Benefits Act is concerned, it does not look towards the condition of service

whether employee is permanent or temporary. This is a special Act in the benefit of the women itself.

11. In view of the above, Annexure A-1 is quashed and set aside and the respondents are directed to reinstate the applicant forthwith. Since the applicant was not allowed to perform her duties for the remaining period, therefore, she is also entitled for the whole salary for the relevant period along with consequential benefits in view of law laid down by the Hon'ble Apex Court in the case of **Commissioner., Karnataka Housing Board v. C. Muddaiah**, (2007) 7 SCC 689.

12. At this stage, learned counsel for the respondents submitted that there is no vacant post of Senior Resident on which the applicant was performing duties before her termination. In view of such position, we direct the respondents that salary for the remaining contractual period of the applicant shall be paid to the applicant with all consequential benefits.

13. The applicant, who is present in person, submits that the respondents may not issue the Experience Certificate. Needless to say that why the respondent department shirk in giving the Experience Certificate if otherwise permissible in the law.

14. With these directions, the Original Application is allowed. No costs.

(B V Sudhakar)
Administrative Member

(Ramesh Singh Thakur)
Judicial Member

am/-