

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5559 OF 2015

[Smt. Yashodhara w/o Namdeo Sahare .vs. The State of Maharashtra and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Alok Daga, counsel for the petitioner,
Shri D.B. Patel, AGP for the respondent no.1.

CORAM : SMT. VASANTI A. NAIK AND
A.I.S. CHEEMA, JJ.

DATE : OCTOBER 06, 2015.

Heard.

By this petition, the petitioner challenges the order of the Taluka Health Officer, Nagbhid dated 26.8.2015, asking the petitioner to stop working as a Swayamsevika (employee) of ASHA, a scheme floated by the Central Government and implemented by the State.

The petitioner was appointed as a Swayamsevika of ASHA, by an order dated 21.7.2009. The order mentions the duties and responsibilities of the Swayamsevika. The order recites that the the petitioner should work without honorarium, as the scheme was a self help scheme and the Swayamsevikas were not entitled to honorarium. The appointment order shows that the appointment of the petitioner was temporary and the services could be terminated if the performance of the petitioner was not satisfactory. By a Circular dated 21.11.2014, a sum of Rs.500/- was made payable to the Swayamsevikas as honorarium, if their work was found to be satisfactory. The petitioner is now elected as a member of the Grampanchayat and after her election as such, the Taluka Health Officer of Nagbhid, has issued the impugned communication informing the petitioner that the petitioner should tender her resignation as a Swayamsevika or else her appointment as a Swayamsevika would be terminated. The order dated 26.8.2015 is impugned in the instant

petition.

On hearing the learned counsel for the parties and on a perusal of the documents annexed to the petition, it appears that the petitioner would not have a legal right to continue as a Swayamsevika of ASHA, a scheme implemented by the State Government. Though the petitioner was working as a Swayamsevika of ASHA for a period of five years, the petitioner was rightly directed by the Taluka Health Officer to stop working as a Swayamsevika of ASHA, after she was elected as a member of the Grampanchayat. In our view, the petitioner does not have a right to continue to work as a Swayamsevika. The appointment of the petitioner is not on a regular post. The petitioner is only appointed as a Swayamsevika of ASHA. The impugned order is based on the communication issued by the Commissioner of Family Welfare and Director, National Health Mission, Mumbai, Maharashtra. The said communication dated 15.4.2015, on which the impugned order is based, depicts that the petitioner was rightly directed to tender the resignation as a Swayamsevika, after her election as a member of the Grampanchayat. It is observed by the Commissioner of Family Welfare that if a woman is permitted to work as a Swayamsevika and also as a elected member of a local body, the said woman would not be able to do justice to the two offices held by her. The petitioner has to perform several duties and responsibilities of Swayamsevika, as mentioned in the appointment order. The Commissioner has observed in the communication dated 15.4.2015 that it would not be possible for a woman to satisfactorily perform the duties and responsibilities of the posts, one of a Swayamsevika and the other of a elected member of the local body. The object of asking the petitioner to tender the resignation is that the petitioner would not be able to perform both the duties successfully. We do not find anything wrong with the impugned communication, dated 26.8.2015, so as to interfere with the same in exercise of the writ jurisdiction. Though the petitioner has made a reference to the Government Resolution dated 5.8.2010 to state that the said resolution does not pertain to the Swayamsevikas of ASHA and hence the same could not be the basis for the impugned order, we do not find that the impugned order is solely based on the Government

Resolution.

Since the petitioner does not have a right to continue as a Swayamsevika of ASHA, after she is elected as a member of the Grampanchayat, the writ petition is dismissed, with no order as to costs.

At this stage, the learned counsel for the petitioner states that the petitioner may be at least permitted to choose between the two offices, i.e. of Swayamsevika and the membership of the Grampanchayat. It is stated that the petitioner apprehends that the petitioner would not be entitled to continue as a Swayamsevika, even if she gives up her membership to the Grampanchayat. The apprehension is not well founded. If the petitioner gives up the membership to the Grampanchayat, the respondents could consider continuing the petitioner on the post of Swayamsevika. Order accordingly.

JUDGE

JUDGE

Gulande