

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT APPEAL No.45 OF 2018

JUDGMENT: (per Hon'ble Sri Justice Suresh Kumar Kait)

1. Vide the present appeal, the appellant-State of Telangana assailed the order dated 16.11.2017 passed in W.P.No.27604 of 2017 by the learned single Judge of this Court, whereby the petition filed by the 1st respondent herein has been allowed.

2. Respondent No.1 underwent training from 5.3.2006 to 3.4.2006 from the Academy of Nursing Studies, Hyderabad, conducted by Department of Family Welfare, Andhra Pradesh under the Project of RCH-2 (Reproductive and Child Health), and on the basis of the said training, she was appointed as ASHA worker in the year 2006. While so, in the month of August, 2016, she was suffering from fever and as she could not recover from the same, she went to Hyderabad for better treatment, where Doctors advised her to take rest. As soon as she recovered from illness, she approached the 3rd appellant requesting him to permit her to discharge duties. The 3rd appellant did not issue any order permitting her to discharge duties on the ground that the Sarpanch made temporary arrangement, and her services would be dismissed. When the 1st respondent was not allowed to discharge her duties, she applied to the 3rd appellant under the Right to Information Act, and it revealed that the 1st respondent absented herself from duties from August, 2016 and the Sarpanch of the village passed a resolution to remove the 1st respondent. It was also stated that no new ASHA worker was appointed by inviting

applications. However, on the resolution of the Gram Panchayat, the 2nd respondent herein was appointed.

3. The learned Tribunal after considering the rival contentions of the parties recorded its opinion that ASHA worker can be removed from service only if she does not attend three consecutive VHNDs, without giving any information/reason for the same or she absented from three consecutive monthly meetings at PHC, without giving any information/reason for the same.

4. The present appeal is filed on the ground that the learned single Judge failed to see that after appointment of the 2nd respondent herein, the 1st respondent filed an application in Prajavani programme on 15.5.2017 requesting to admit her to duty instead of approaching the Controlling Officer and she made a request to grievance cell about 6 months ago stating that she recovered from the illness in the month of December and she made an application on 15.5.2017 to admit her to duty i.e., about 5 ½ months after recovery from the alleged illness, which clearly establishes that it is only after thought, to get undue benefit she attempted to made out a case.

5. Yet another ground raised in the present appeal is that the learned single Judge failed to see that the meeting itself was conducted after informing the Sarpanch about the continuing absenteeism of the 1st respondent for a period of three months continuously without intimation to any one in the office of the Controlling Officer as was informed by the Medical Officer and as such, it is felt about the urgency to fill up the post and thereby a resolution was passed on 15.9.2016 by the Grampanchayat and as such, the order in W.P.No.27604/2017 is arbitrary and illegal.

6. Fact remains that there are guidelines for removal of ASHA worker, which read as:

“Removal of ASHA:

Following is criteria for declaring any ASHA as an inactive/Dormant ASHA, Drop out, if :-

* She has submitted a letter of resignation to the VHSNC/VLC and her Facilitator, OR

* She has not attended the three consecutive VHNDs, without giving any information/reason for the same, OR

* She has not attended the three consecutive Monthly Meetings at PHC, without giving any information/reason for the same, OR

* She has not been active in most of the RMNCH+ Activities and like mobilization of pregnant women/mother/newborn for routine immunization services, home visits for HBPNC and population stabilization services etc., in her area, OR

* DAC, BAC, AF visited the village of ASHA and ascertained through discussions with all VHSNC/VLC members that she is indeed not active.

If there is a genuine problem, she should be supported until it is overcome through the VHSNC or village SHG. If the problem persists and the community also agrees that ASHA worker should not continue, a signed letter stating this should be obtained from her and approved by BAC/CM after due validation from Gram Sabha/Panchayat.

In case of contesting her removal, it should be referred to the DAC or other person appointed by the Executive Secretary of the District Health and Family Welfare Society, who would listen to her views, record them and then take a final view.

It is desirable in case of all ‘dropouts’ whatever the reason, to conduct and document an exit interview. Vacancies howsoever arise, should be filled in by the same selection process as laid down by the State Government, based on these guidelines.”

7. In view of the above guidelines, ASHA worker can be removed from service if she does not attend three consecutive VHNDs, without giving any information/reason for the same or she absented from three consecutive monthly meetings at PHC, without giving any information/reason for the same.

8. In the case in hand, the resolution was passed on 15th September, 2016 for her absence from 1.9.2016. The three months period has not elapsed. In such circumstances, the resolution alleged to have been passed on 15.9.2016 removing the 1st respondent is contrary to the guidelines of removal of ASHA worker. It is not in dispute that the 1st respondent rendered service for more than 10 years.

9. In view of the facts recorded above, we find no illegality and perversity in the order passed by the learned single Judge.

10. Finding no merits, the Writ Appeal is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE SURESH KUMAR KAIT

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 15th February, 2018.
Nn.

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT APPEAL No.45 of 2018

(Oral order delivered by the Hon'ble Sri Justice Suresh Kumar Kait)



15/02/2018

Nn.