

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

Writ Petition No.13781 of 2001

-
Date: November 6, 2013

Between:

The Commissioner, A.P. Vaidya
Vidhana Parishad, Hyderabad and
another

... Petitioners

And

Smt. L. Vijaya Kumari and another

... Respondents

Order: (Per Justice R. Subhash Reddy)

This Writ Petition is filed by the respondents in O.A.No.5507 of 2001 on the file of the A.P. Administrative Tribunal, Hyderabad, aggrieved by the order dated 07.06.2010.

On the application filed by the 1st respondent-applicant under Section 19 of the Administrative Tribunals Act, 1985, the Tribunal, by the aforesaid order, issued directions to the petitioners herein to allow her to join duty without prejudice to the disciplinary action to be initiated by them.

The 1st respondent-applicant was appointed as

Staff Nurse in A.P. Vaidya Vidhana Parishad on contract basis vide proceedings No.P2/20204/89, dated 29.11.1990. On 07.07.1997, she applied Earned Leave for 30 days but the same was refused. In spite of notice, she did not join duty and after being unauthorizedly absent for more than three years, she submitted joining report on 23.01.2001. When she was not allowed to join, she approached the Tribunal seeking directions to declare the action of the petitioners herein, in not permitting her to join duty as Staff Nurse pursuant to joining report dated 23.01.2001, as illegal. The Tribunal, mainly referring to the circular instructions vide Memo No.C-9101-4/8/FR.I/91, dated 25.12.1991, issued directions to the petitioners to allow the 1st respondent-applicant to join duty without prejudice to the case of the petitioners to initiate disciplinary action against her.

Heard Sri N. Krishna Kumar, learned counsel for the petitioners and Sri Siva learned counsel for the 1st respondent-applicant.

It is contended by the learned counsel for the petitioners that as the 1st respondent-applicant was appointed on contract basis, the circular instructions referred above cannot be applied to her and in spite of serving notice, she had not chosen to join duty; in terms of the agreement, the contract has come to an end, as such, she is not entitled to join duty after remaining unauthorizedly absent for more than three years.

On the other hand, it is contended by the learned counsel for the 1st respondent-applicant that though the 1st respondent-applicant was appointed as Staff Nurse on contract basis, in the very agreement entered between the petitioners and the 1st respondent-applicant, it is clear that after satisfactory completion of one month's apprenticeship, she was put on probation in the scale of pay of Rs.1150-40-1520-50-2100 for a period of two years, therefore, she is to be treated as a regular employee of A.P. Vaidya Vidhana Parishad. It is further contended that, in any event, even if she is unauthorizedly absent to duty, it is open to the petitioners to initiate action in accordance with law, but they cannot prevent her from joining when she had reported to duty.

It is to be noticed that A.P. Vaidya Vidhana Parishad is a statutory body under the provisions of the A.P. Vaidya Vidhana Parishad Act, 1986. Recruitment to various categories of posts in the A.P. Vaidya Vidhana Parishad, is governed by the statutory Rules framed under the Act and insofar as the post of Staff Nurse is concerned, the method of recruitment is by way of direct recruitment. It is not in dispute that the 1st respondent-applicant is not appointed by following due procedure as prescribed under Rules.

We have perused a copy of the agreement entered between the petitioners and the 1st respondent, engaging

her services on contract basis. It is not in dispute that she was appointed in the year 1990. She applied Earned Leave from 07.07.1997 to 05.08.1997, but the same was refused. However, she did not join duty. Thereafter she was unauthorizedly absent for more than three years, until she reported to duty on 23.01.2001. The Tribunal, mainly relying on the circular instructions referred above, issued directions to the petitioners to allow the 1st respondent-applicant to join duty. A perusal of the said circular instructions make it clear that the same are applicable for regularly appointed Government employees and they cannot be made applicable to the employees appointed on contract basis. At this juncture, we deem it apposite to refer the relevant clause in the agreement, entered between the petitioners and the 1st respondent-applicant, which reads as under:

“In case the performance of the employee is found to be unsatisfactory during the period of apprenticeship, the contract shall automatically stand terminated after completion of apprenticeship or from the date of communication of the order of unsatisfactory performance whichever is later.”

From the affidavit filed in support of the Writ Petition, it is clear that the 1st respondent-applicant was unauthorizedly absent for duty. By virtue of the aforesaid clause in the agreement, the services of the 1st respondent-applicant came to an end automatically and therefore she is not entitled for any posting.

Further, it is to be noticed that there is no valid explanation at all for unauthorized absence from 07.07.1997 to 23.01.2001. In the absence of appointment of the 1st respondent-applicant on regular basis, and, further, in the absence of any valid explanation for unauthorized absence for more than three years, the Tribunal erred in issuing directions to the petitioners to allow the 1st respondent-applicant to join duty. In that view of the matter, the impugned order of the Tribunal is liable to be set aside. Accordingly, the order dated 07.06.2001 passed by the A.P. Administrative Tribunal in O.A.No.3507 of 2001 is set aside.

Writ Petition is allowed to the extent indicated above. As a sequel, miscellaneous petitions if any pending in this Writ Petition stand disposed of. No order as to costs.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

November 6, 2013

MRR

