

10.
19.09.2022.
Ct. No. 21.
F.B.

WPA 3584 of 2022

Daibaki Kumar

-Vs.-

The State of West Bengal & Ors.

**Mr. Abhishek Prasad,
Mr. Sougata Mitra,
Mr. Rameshwar Sinha,
Ms. Ankita Prasad,
Ms. Jahanara Begum
..... For the Petitioner.**

**Mr. Rezaul Hossain
..... For the State.**

The petitioner's grievance in this case is that after being selected as an Accredited Social Health Activist (for short, ASHA) Karmee for Tatuara Health Sub Centre under Block Jhalda-II in District-Purulia, she was replaced by the private respondent no. 10 as a "Drop Out" candidate. The said fact appears from the office Circular dated February 16, 2022 issued by the Additional Mission Director, Health and Family Welfare Department, Nation Health Mission, Government of West Bengal.

Learned Counsel appearing on behalf of the petitioner, submits that the petitioner after being selected as an ASHA Karmee suffered from the disease of leprosy and therefore, could not attend her duties immediately upon joining of the same.

The petitioner was appointed in July 26, 2014 and immediately thereafter she notified her inability to continue with the training.

The post for ASHA Karmee was re-advertised in 2018 and the private respondent no. 10 was selected in place and stead of the petitioner.

Exception to the report filed on behalf of the petitioner be kept on record.

Mr. Hossain, Learned Counsel appearing for the State, relies on the report filed by the Chief Medical Officer of Health, Purulia dated May 10, 2022 for clarifying the position. He submits that the writ petitioner did not complete her training, i.e. Orientation training of 5 days and 6-7 module 8 days training and did not discharge her duties since the very appointment. She absented herself for a long time without any intimation to the authority concerned and violated the provisions of the ASHA guidelines. Reference has been made to the leave entitlement of ASHA Karmee. They are only entitled to a rest period of 45 days after delivery and are not entitled to any other kind of leave, for any other purpose. The said conditions are stipulated Clause-1 of the Memo dated May 19, 2014 annexed to the report filed by the respondent no. 6.

Having considered the rival submissions of the parties and the materials place on record, this Court finds that there was no intimation from 2014 about the requirement of leave by the writ petitioner. No document has been produced to support the contention of the petitioner that she had intimated to the authorities, the necessity of her leave due to her illness.

Further, from the Memo dated May 19, 2014, it appears that ASHA Karmees are entitled to 45 days leaves after delivery and not for any other purpose. It also appears that from 2014 to 2018 there was no ASHA Karmee at Tatuara Health Sub Centre under Block Jhalda-II in District-Purulia. The post of an ASHA Karmee cannot be kept vacant indefinitely, till such time the petitioner evinces her intention for joining the said post. The representation of the petitioner for reinstatement was made on February 18, 2020 almost after six years from the date of her initial appointment. No document could be placed to show that the writ petitioner prayed for leave of absence from the authority concerned regarding her medical condition at a previous date.

The petitioner now cannot rely on the technicality of the non-compliance of the provisions stipulated in Clause 2 of the Memo dated May 19, 2014 without herself complying with the conditions stipulated in Clause 1.

It is a well settled principle of law that a document has to be read as a whole. The petitioner cannot rely on one part without complying with the other.

In the light of the discussions above, this writ petition, being **WPA 3584 of 2022** is **dismissed**.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)