

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-4682-2022 (O&M)
Decided on : 15.02.2024

Kavita Saini

...Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Deepak Grover, Advocate for the petitioner.

Mr. Pankaj Middha, Addl. A.G., Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the prayer of the petitioner is that the order dated 02.11.2021 (Annexure P-10), by which, the services of the petitioner have been terminated while working on the post of Auxiliary Nurse Midwife (ANM), may kindly be set-aside.
2. Learned counsel for the petitioner argues that the petitioner was working on the post of ANM with the department concerned for a period of 14 years and as the petitioner was unwell for certain period, she could not attend the duty and her services were terminated by the respondents-department vide impugned order dated 02.11.2021 (Annexure P-10).
3. Learned counsel for the petitioner further submits that once, it has already come on record that the petitioner was suffering from '*Tuberculosis in her lungs*', the respondents should have taken a compassionate view of the absence of the petitioner from the duty for a period of three months, which was not deliberate but due to medical reasons.
4. Learned counsel for the petitioner further submits that keeping in view the interim order dated 19.04.2022 passed by the Co-ordinate Bench of this Court, the petitioner is already continuing in service, hence, the respondents be directed to allow the petitioner to continue in service.

5. Learned counsel for the respondents on the other hand submits that in case, a contractual employee does not attend the duties for a consecutive period of 3 months, the power to terminate the services of the said employee exists with the department concerned and in the present case, the said clause was invoked as the petitioner remained absent from service for a period of more than three months.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. The absence for a period of three months, *which is required to be taken into consideration for terminating the services of a contractual employee should be based upon the fact that the said absence is unilateral and that too without any valid justification.* In case, an employee is not able to attend the duties due to a fact which is beyond the control of the said employee, either due to medical ailment or any other valid reason, the same needs to be looked into by the department concerned before passing any order under the said clause wherein, a contractual employee, who is not able to attend the duties for a period of 03 months, his/her services can be terminated.

8. In the present case, it has come on record that the petitioner was suffering from '*Tuberculosis in her lungs*', due to which ailment, the petitioner was not in a position to attend the duty and after the interim order passed by this Court, the petitioner is continuously attending the duties without any long leave and no such grievance with regard to absence period is raised by the department concerned.

9. Keeping in view the facts and circumstances that have already come on record herein above, especially that the absence of three months from service, due to which the services of the petitioner were terminated by

the respondents-department was due to the medical ailment, and was not intentional and the said absence was due to a fact which was beyond the control of the petitioner, the same needs to be condoned and as the petitioner is already continuing in service, she should be allowed to continue in service subject to the conditions that in future the petitioner will comply all the rules and regulations as envisaged by the department. Hence, the impugned order dated 02.11.2021 (Annexure P-10) is hereby set-aside and the present petition stands disposed of in above terms.

10. Pending miscellaneous application if any, shall also stand disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

15.02.2024
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Whether speaking/reasoned:Yes/No

Whether Reportable:Yes/No