

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.6827/2009**

Date of Decision: 29th January, 2010

CAPT SWATI SHARMA Petitioner
Through: Mr. S.M. Dalal, Advocate

versus

UOI & ORS. Respondents
Through: Ms. Rajdipa Behura with Mr.
Shravanth Shanker, Advcoates

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? : Yes
2. To be referred to Reporter or not? : Yes
3. Whether the judgment should be reported in the Digest? : Yes

% **JUDGMENT (Oral)**

GITA MITTAL, J.

1. The present writ petition has been filed by the petitioner praying for quashing of the order dated 11th of November 2008 passed by the respondent no.3 rejecting the application for resignation made by the petitioner.

2. The petitioner is a serving officer of the Military Nursing Service who was granted permanent commission in the Army on 02nd of August 2003. She was transferred by an order passed on 26th May 2008 to the 153rd General Hospital at Leh. The petitioner is stated to have served in Command Hospital Chandimandir as well as in the

Military Hospital, Allahabad during the course of her service.

3. It is urged by Mr. Dalal that in consonance with the traditions of the conservative Indian society, in July 2008, the parents of the petitioner were considering marriage proposals for her. A suitable match was identified by them. The writ petition states that the proposed match was that of an IT professional, who was permanently based at New Delhi. It is further submitted that his parents were old and needing constant care and looking after. The only precondition to the marriage which was laid down by the prospective in-laws was that would be wife/daughter-in-law will not work and manage the house, devote herself to looking after home and in laws.

4. In this background, the petitioner submitted her resignation from service on 26th of July 2008 to the respondents. This application was scrutinized and recommended by not only the then Principal Matron under whom the petitioner was working but also by her Commanding Officer. It was thereafter forwarded to the Army Headquarters through proper channel.

5. In the hopeful expectation that her resignation would be favourably considered, the petitioner advised her parents to finalise the marriage proposal. However, by the impugned letter dated 11th of November 2008, the petitioner was informed by the Army Headquarters that her resignation was rejected by the Director General Medical Services for the reason that the grounds put forth were not extreme enough to warrant resignation.

6. The factual narration in the writ petition shows that on 24th of January 2009, the petitioner was married to Sh. Rajeev Sharma. The petitioner submits that her husband and in laws insisted that she should resign from her commission as the present service is not compatible with the service of her husband. In view of the pressure from her husband and new in-laws as well as because of the prolonged separation resulting on account of her Leh posting, the petitioner has stated that she is mentally disturbed and is not able to focus on her work and professional duties which are of very sensitive nature and require full dedication and concentration. In this background, the petitioner has filed the present writ petition seeking directions to the respondents to accept her resignation.

7. Mr. S.M. Dalal, learned counsel appearing for the petitioner has vehemently contended that the action of the respondent is violative of the rights of the petitioner under Article 21 and 23 of the Constitution of India. He has placed reliance on the pronouncement of the apex court reported in ***JT 2000 (5) SC 135*** titled ***Union of India & Anr. vs. Charanjit S. Gill & Ors.*** to contend that fundamental rights of serving officers of the army have to be protected under all circumstances.

8. Learned counsel drawn our attention to the pronouncement of the division bench of this court reported in ***60 (1995) 118 (DB)*** titled ***Major Rahul Shukla vs. Union of India & Ors.*** and submitted that the action of the respondent in rejecting the resignation application of

the petitioner was contrary to the well settled principles laid down in this pronouncement to the effect that the continuance in service to meet exigencies thereof cannot be a ground for rejection of an application but can only serve as a ground for keeping the application in abeyance.

9. Learned counsel for the petitioner has also placed strong reliance on the pronouncement of the Supreme Court reported in **AIR 1982 SC 1473** titled ***People's Union for Democratic Rights and Ors. vs. Union of India & Ors.*** in support of the contention that even a law providing that a person has to be compelled to serve for specified period, would amount to forced labour and such law would be void as offending Article 23. It is submitted that the order of the respondent rejecting the petitioner's application for resignation is in the teeth of this well settled legal position and runs violative of Article 23 of the Constitution of India and cannot stand.

10. Our attention is also drawn to Article 16 of the Universal Declaration of Human Rights, 1948 which has been signed and ratified by India, which recognizes right to life as a human right. It also provides that men and women of full age have the right to marry and found a family without any limitation and further that they are entitled to equal rights as to marriage during its subsistence as well as dissolution. The Universal Human Rights Declaration also recognizes that family is a natural and fundamental group unit of society which is entitled to protection by society and the state.

11. Our attention is also drawn to Article 23 of the International Covenant on Civil and Political Rights, 1966, which provides that the family is a natural and fundamental group unit of society which is entitled to protection by society and the state. It is further stated that the right of men and women of marriageable age to marry and to found a family shall be recognized. The state parties to the covenant undertook to take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage during its subsistence as well as at its dissolution. Learned counsel for the petitioner contends that the action of the respondent is violative of the rights of the petitioner under the International Covenants as well.

12. On the other hand, learned counsel appearing for the respondent has vehemently contended that on the date of her marriage, the petitioner was aware that her application for resignation stood rejected and that she got married despite this fact. It is contended that therefore there was no unforeseen circumstances which would now entitle the petitioner to resign her commission. Reliance has been placed on pronouncement dated 16th December, 2005 passed in ***W.P. (C) No.4646/2005*** titled ***Shakul Tyagi vs. Union of India & Ors.*** to contend that the petitioner has no absolute right to grant of an application for resignation. It has been vehemently urged that this court has limited powers of judicial review so as a challenge to the action of the respondent based on policy is concerned. The submission is that the petitioner has also undergone extensive training and has acquired her expertise in the field only on account of

the training imparted to her by the respondents, which is followed by her experience on account of her employment with the respondent in the nursing service. It is argued that it cannot be ruled out that the petitioner was seeking to quit service on account of better civilian prospects. It is also urged that there is deficiency so far as availability of personnel in the service is concerned. The submission is that public interest demands rejection of the request for resignation.

13. Learned counsel has further contended that the petitioner never approached the respondents placing her marriage or any marital difficulties in support of an application for resignation. The respondents also challenge the jurisdiction of this court to grant such a prayer in the present proceedings.

14. The petitioner was not married when she made the earlier application which resulted in the impugned order dated 11th November, 2008. The order dated 11th of November 2008 has to be tested on the basis of facts and material then placed before the respondents and not in the light of facts which were not even in existence on the date when the application was made or order passed. This order obviously cannot impact consideration of the fresh application on the aforesaid facts and grounds.

15. We find substance in the last objection on behalf of the respondent to the effect that the petitioner has come to this court without approaching the respondent seeking resignation from the service after her marriage. The petitioner was also required to place

difficulties in her marital life, if any, on account of the exigencies of the service and its requirement of frequent postings for consideration before the respondents. Any other reason and material necessitating the petitioner leaving the employment is also required to be placed before the respondents for consideration. There is merit in this contention. This writ petition certainly cannot be treated as an application for resignation, to be granted by this court without its consideration or rejection if at all by the respondents.

16. Our attention is drawn to the fact that the petitioner has been posted in Leh since May 2008 and that the maximum prescribed tenure in such posting is for a period of two years. Therefore, in any case, the petitioner is required to be posted out of her current posting on completion of the prescribed tenure, which event is to occur in the near future.

17. Without in any manner opining on the issues which have been urged by both sides and considering the aforesaid facts and circumstances, we dispose off this writ petition, with the following directions:

- (i) The petitioner shall be at liberty to make an application afresh for resignation from the Military Nursing Service placing before the respondent the material which has been placed before us including copies of the judicial precedents which have been relied upon, the extract of the International Covenants which have been noted herein above as well as any other relevant

material, within a period of four weeks from today along with the prescribed format of the application;

- (ii) The respondents shall consider the application of the petitioner within a period of four weeks thereafter and the order thereon shall be communicated to the petitioner;
- (iii) In case, the petitioner is still aggrieved by the order passed by the respondents, the petitioner shall be at liberty to assail the same by way of an appropriate proceedings;
- (iv) Appropriate steps for posting of the petitioner on completion of the tenure may be considered pending receipt and consideration of the resignation application keeping in view the difficulties which have been expressed by her in marital life;
- (v) The respondents shall consider the application of the petitioner uninfluenced by the order dated 11th November 2008 as well as the filing of the present writ petition.
- (vi) It is clarified that nothing herein contained is an expression of opinion on the merits of the case.

Dasti to parties.

GITA MITTAL, J.

VIPIN SANGHI, J.

JANUARY 29, 2010

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