

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No. 241 of 2024

Misha UpadhyayPetitioner

Versus

State of Uttarakhand and OthersRespondents

Present:-

Mr. Paritosh Dalakoti, learned counsel for the petitioner.

Mr. Rajiv Singh Bisht, Addl. C.S.C. for the State.

Hon'ble Pankaj Purohit, J. (Oral)

The writ petition is filed by the petitioner seeking a prayer to quash the order dated 15.02.2024 (Annexure-9 to the writ petition), whereby, the petitioner was refused joining on the post of Nursing Officer in B.D. Pandey District Hospital, Nainital only for the reason that the petitioner is 13 weeks pregnant.

2. It is the case of the petitioner that petitioner pursuant to her selection was issued an appointment letter dated 23.01.2024 on the post of Nursing Officer (female) and was posted at B.D. Pandey District Hospital, Nainital. The appointment letter is issued under the hands of Director General of Medical Health and Family Welfare, Dehradun, Uttarakhand.

3. The petitioner, after getting the requisite documentation including the medical fitness certificate, went to the office of respondent no. 4 B.D. Pandey District Hospital, Nainital for joining, but, unfortunately by the impugned order, she was refused joining on the ground that the medical fitness certificate dated 15.02.2024, which

was submitted by her contained an endorsement “temporarily unfit for joining”.

4. This Court vide order dated 22.02.2024 has called instructions from the respondents as to why the joining is not given to the petitioner. The learned counsel for the State handed over the written instruction today in the Court, wherein, it has been stated that since in the medical fitness certificate, the doctor has written “temporarily unfit for joining”, the joining was not given to the petitioner. The said instruction further reveals that this endorsement was made in the medical fitness certificate of the petitioner in view of the Gazette of India: Extraordinary, Part I, section 1, page – 120, clause 09, which prescribes as under:-

“यदि जांच परिणाम स्वरूप कोई महिला उम्मीदवार 12 सप्ताह या उससे अधिक समय की गर्भवती पायी जाती है तो उसको अस्थाई रूप से तब तक अस्वस्थ घोषित किया जाना चाहिए जब तक कि उसका प्रसव न हो जाय। किसी पंजीकृत मेडिकल प्रैक्टिसनर से आरोग्यता का प्रमाण पत्र प्रस्तुत करने पर प्रसूति की तारीख के 6 सप्ताह बाद आरोग्य प्रमाण पत्र के लिए उसकी फिर से स्वास्थ्य परीक्षा की जानी चाहिए। ”

5. The learned Additional C.S.C. argued vehemently that therefore, there was nothing wrong on the side of the respondent in not giving joining to the petitioner. It is also contended by the learned counsel for the State on instructions, that the duties, which the petitioner has to perform, are cumbersome and owing to her pregnancy, the same could not be performed by her.

6. I have perused the medical fitness certificate as well as the instruction given by the respondent State. The medical fitness certificate, which is enclosed as Annexure No. 8 to the writ petition

reveals no disease, constitutional weaknesses or bodily infirmity/ except the pregnancy of 13 weeks and 2 days and the same medical certificate further reveals that it is not a disqualification for any employment. Moreover, the kind of treatment, which is meted out to the petitioner at the hands of the respondents amounts to gender bias and she cannot be denied joined.

7. The motherhood is one of the greatest and noblest blessings to a woman by nature and she cannot be denied public employment for this reason that she is pregnant, even it cannot be delayed by this draconian rule as cited by the State.

8. On the one hand, a woman is entitled for maternity leave which has now been held as social and fundamental right by the Apex Court time and again, to deny joining on the ground of pregnancy, would be highly discriminatory to a woman. It is certainly in violation of Article 14, 16 and 21 of the Constitution of India.

9. If a situation is visualized that a woman who joins service on fresh appointment and becomes pregnant after joining, she would get maternity leave, then why a pregnant lady cannot join her duties on fresh appointment. After joining, she would also be entitled for maternity leave. This action of the State is highly parochial against the women who make half of the population as said and, therefore, it cannot be countenanced. We have to look at it with a new angle.

10. Since, the reasons, which have been stated by the respondent-State in instructions are the only reasons for not giving joining to the

petitioner, both the parties present have no objection if the petition is disposed of finally.

11. In view of the discussion made hereinabove, the writ petition is accordingly allowed.

12. The impugned order dated 15.02.2024 (Annexure-9 to the Writ Petition) is hereby quashed. The respondents are directed to give immediate joining to the petitioner within 24 hours from the date of production of certified copy of this order.

(Pankaj Purohit, J.)
23.02.2024

Ujjwal