

retrospective and the respondents could not take any advantage of that clause.

(10) For the foregoing reasons, we allow the appeal and set aside the impugned judgment and order of the learned Single Judge. Consequently, the writ petition is allowed and the orders of the Collector, Ludhiana and the Commissioner, Jullundur Division, dated May 15, 1970 and March 4, 1971 are set aside, but with no order as to costs.

R. N. R.

Before : I. S. Tiwana, J.

BHARTI DEVI,—Petitioner

versus

STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 3378 of 1985

August 6, 1986

Constitution of India, 1950—Article 14—Lady Doctor appointed to do house job in a medical college—Government instructions prescribing criteria for such appointment—Physical and mental fitness according to the standard of fitness prescribed for entrance to the Punjab Medical College Service provided as one of the conditions for appointment—Standard of fitness prescribed for the service aforesaid not produced—Appointment of the doctor to the house job terminated on the ground that the doctor was 28 weeks pregnant and as such physically and mentally unfit—Pregnancy aforesaid—Whether renders the doctor unfit for appointment—Appointment aforesaid—Whether could be validly terminated.

Held, that as per the criteria prescribed for appointment to do the house job a candidate is required to (i) possess the minimum educational qualification of M.B.B.S. from a recognised University, (ii) should be registered with the Punjab Medical Council; and (iii) should be physically and mentally fit according to the standards of fitness prescribed for entrance to the Punjab Medical Service. However, in view of the fact that it has not been shown as to what is the criterion of mental and physical fitness laid down for entrance to the Punjab State Medical Service it cannot be said that the appointment of the doctor to do house job was violative

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of the eligibility criteria prescribed. It is no doubt true that during pregnancy many demands are made on the maternal organism consequent upon the rapid growth of the fertilised ovum and to meet these demands of the growing foetus, the maternal system has to undergo certain changes, yet the fact remains that pregnancy is something very natural and normal that can happen to a normal young woman. Such a normal and natural happening cannot be said to have rendered a woman physically and mentally unfit to hold a Government job. In this view of the matter it has to be held that the pregnancy aforesaid does not render the appointees unfit for appointment and as such the said appointment could not be validly terminated.

(Paras 5 and 6).

Writ Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to summon the record of the case and after perusing the same, may be pleased to :—

- (a) *issue a writ of certiorari, or any other writ or writs, direction quashing the order, Annexure P4 holding that the petitioner is fully entitled to continue as a House Surgeon in the Department of Gyana and Obst and complete her tenure as per the directions given by respondent No. 3;*
- (b) *dispense with service of advance notice on respondents;*
- (c) *exempt filing of certified copies of the Annexures;*
- (d) *award cost of the petition to the petitioner;*
- (e) *operation of the impugned order, Annexure P-4 be stayed.*

C.M. No. 2182/1986

Application under section 151 C.P.C. praying that the enclosed replication may be allowed to be placed on record.

G. R. Majithia, Senior Advocate with Sanjay Majithia, and Ashok Jindal, Advocate, for the Petitioner.

H. S. Nagra, Advocate, for the Respondent.

JUDGMENT

I. S. Tiwana, J. (oral)—

(1) Having qualified the M.B.B.S., examination in December, 1985, the petitioner applied for one year's house job in Government

Medical College, Patiala, with a view to have her post-graduation attainments. It is the undisputed position that during one year's house job, a student can have attainments in two specialities of his choice. She was selected and appointed to do House job in Anaesthesia for six months, i.e., from January 1, 1986 to June 30, 1986, and she has successfully completed this term. Next she sought appointment for house job in Gynaecology and Obstetrics commencing from July 1, 1986. She was duly selected and as a matter of fact she joined this course. This selection of hers was, however, made subject to a medical fitness certificate which she was to obtain from the Professor Incharge of the Gynaecology Department. As per this requirement, she obtained a medical fitness certificate (Annexure P. 2) from Dr. K. K. Sandhu, Professor of Gynaecology Department.

This certificate reads as under :—

“I, Dr. K. K. Sandhu, Prof. of Gynae Department do hereby certify that I have medically examined Dr. Bharti, daughter of Shri Telu Ram who has been selected for the house job for the session July and find that he/she is physically and mentally fit according to the standard of fitness for entering in the Punjab State Medical Services except having pregnancy 28 weeks. D.L.M.P. 6th January, 1986.

Signatures of said doctor are given below:

Signature : (Sd.) Bharti.”

(2) Since respondent No. 2, i.e., Medical Superintendent, Rajendra Hospital, Patiala, did not feel satisfied with the certificate of Dr. Sandhu, he made a reference to the Director, Research and Medical Education, Punjab, to find out whether 28 weeks pregnancy of the petitioner could render her unfit for the house job for which she had been selected and appointed. The Director replied to the said query in the following manner,—*vide* his communication, dated July 4, 1986, (Annexure P. 3):

“Pregnancy is no bar for doing house job. If Dr. Bharti Devi, daughter of Shri Telu Ram will get leave during her house job, the period of leave will be treated without honorarium and inlieu of this period she will have

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to complete the term of house job after 31st December, 1986 without honorarium. This also disposes of your memo. No. 2118, dated 3rd July, 1986."

(3) Still not feeling reconciled with the opinion expressed by the Director, respondent No. 2 has terminated the appointment of the petitioner as House Surgeon in Gynaecology Department,—*vide* his impugned letter, dated July 18, 1986, Annexure P.4. The relevant part of this letter reads as follows :—

"As per criteria for selection of House Surgeon for appointment, issued,—*vide* Punjab Government Memo. No. 13505-5HB-II-76/ , dated 22nd September, 1976, Dr. Bharti Devi is not eligible for appointment as she is temporary unfit. As such her services may be considered as dispensed with, with effect from 18th July, 1986. She should be relieved of her duties immediately under intimation to this office please.

Medical Superintendent,
Rajendra Hospital, Patiala"

(4) The petitioner impugns this action of respondent No. 2 firstly on the ground that the petitioner's pregnancy, as noticed above, does not render her physically and mentally unfit for the house job or the duties she is supposed to perform as a House Surgeon, and secondly her appointment as such is not violative of the criteria laid down by the Government,—*vide* its communication, dated September 22, 1976 (Annexure P.5). The stand of the respondent-authorities, as disclosed in the affidavit of respondent No. 2 filed on behalf of other respondents also, is that the termination of the services of the petitioner as House Surgeon is strictly legal and valid. Having heard the learned counsel for the parties at some length, I find that the stand of the respondent-authorities must be repelled.

(5) Taking up the second argument first that the petitioner's pregnancy does not offend the criteria laid down by the Government (Annexure P.5) for selection of House Surgeon/House Physician for appointment in the hospitals attached to medical colleges, her learned counsel points out that as per this criteria, a candidate is required to (i) possess the minimum qualification of M.B.B.S. from a recognised University, (ii) he should be registered

with the Punjab Medical Council; and (iii) he should be physically and mentally fit according to the standards of fitness *prescribed for entrance to the Punjab Medical Service* (emphasis added). He urges with some amount of vehemence that the respondent-authorities have nowhere disclosed or pointed out as to what is the prescribed criteria of physical and mental fitness for entrance to the Punjab State Medical Service. On my repeated queries, the learned counsel for the respondent-authorities is not in a position to refer to any such criteria meant for entrance to the Punjab Medical Service. He, however, refers to Annexure R.2, a letter, dated August 31, 1973 from the Chief Secretary to Government, Punjab, to all Heads of the Departments laying down the criteria for the grant of extraordinary leave to female Government employees recruited on temporary *ad-hoc* basis for a limited period. This letter, on the face of it, has no relevancy to the controversy in issue. The instant case is not a case of leave being sought by a temporary employee of the Government. He has no other material to show as to what is the criteria of mental and physical fitness laid down for entrance to the Punjab State Medical Service. In the face of this, the petitioner's pregnancy, as noticed above, can not be said to be violative of the eligibility criteria for her appointment as a House Surgeon/House Physician in the Medical College.

(6) Again, I am inclined to agree with the learned counsel for the petitioner that the petitioner's pregnancy, noticed above, cannot be said to have rendered her unfit physically or mentally to be appointed to the job from which she has been removed,—*vide* Annexure P.4. It is no doubt true that during pregnancy many demands are made on the maternal organism consequent upon the rapid growth of the fertilised ovum and to meet these demands of the growing foetus, the maternal system has to undergo certain changes, yet the fact remains that pregnancy is something very natural and normal that can happen to a normal young woman. How can such a normal and natural happening be said to have rendered that woman physically and mentally unfit to hold a job in Government service. On the other hand, sterility or incapacity to conceive and give birth to a living baby is taken as an abnormality or a disease with a woman. Under the circumstances, respondent No. 2 would have done well to accept the opinion of respondent No. 3 as contained in Annexure P. 3 making the appointment of the petitioner subject to the condition suggested, i.e., If Dr. Bharti Devi, daughter of Shri Telu Ram will get leave during

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her house job, the period of leave will be treated without honorarium and in lieu of this period, she will have to complete the term of House Job after 31st December, 1986 without honorarium". Terminating her services on the above-noted score appears to be utterly unsustainable.

(7) For the reasons recorded above, I allow this petition with costs and while setting aside, Annexure P.4, direct that the petitioner should be allowed to continue her job as a House Surgeon in Gynaecology Department to which she had been admitted, with effect from July 1, 1986. She would have her costs from respondent No. 2 alone which I determine at Rs. 500.

H. S. B.

Before : S. P. Goyal, J.

GIAN DEVI and another,—*Petitioners.*

versus

BACHAN MOTOR FINANCIERS (P) LTD.—*Respondents.*

Company Petition No. 59 of 1986

September 5, 1986

Companies Act (1 of 1956)—Sections 446(1)(b) and 528—Company (Court) Rules, 1959—Rules 147, 164 and 167—Unsecured creditor petitioning for recovery of debt under Section 446(1)(b) of the Act against a Company in liquidation—Such petition—Whether maintainable—Such debt—Whether required to be proved before the Official Liquidator under Section 528 of the Act and the Rules.

Held, that (a reading of) Section 528 of the Companies Act, 1956, provides that in every winding up, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the Company. A detailed procedure as to how the debts are to be proved is provided in Rule 147 onwards of the Company (Court) Rules, 1959. Against the decision of the Liquidator an appeal is competent to the Court under