

Lieutenant (Mrs.) Indira Kumari Kartiayoni

Vs

Maha Nideshak, Raksha Mantralaya, Shastra Sena Chikitsa Seva, New Delhi-1 and Others

Civil Appeal No. 6025 of 1990

(Dr. T.K. Thommen, R.M. Sahai JJ)

30.10.1990

JUDGMENT

1. Special leave granted.
2. The appellant was working as a Lieutenant Nursing Officer in the Military Nursing Service. She got married on 29-4-1988. She had obtained the requisite permission of the authorities to get married. Subsequent to the marriage, her service was discontinued by release order dated 7-10-1988.
3. The discontinuation of service was challenged by the appellant in the High Court. The High Court by its impugned judgment held that the termination was caused not by reason of marriage, but by reason of her comparatively poor performance.
4. We have heard counsel on both sides. We have perused the records. It is not disputed that, but for the marriage, the appellant's performance would have been of sufficiently good average to be retained in service and to be considered for promotion to the next higher post on the basis of her seniority. However, by reason of certain executive orders, it was decided that, notwithstanding her fairly good average record, her service had to be discontinued because of the marriage coupled with the fact that she had not obtained high efficiency performance rate during the three years preceding the marriage.
5. Counsel for the appellant challenges the order of discontinuation of service which is based on a rule, which he characterises, as arbitrary, irrational and violative of the principle of equity.
6. The Additional Solicitor General submits that it was with a view to guaranteeing the efficiency of the Military Nursing Service that it was decided that after marriage a person could remain in service only if she, J'-justified her continuance by showing extra efficiency in the years preceding marriage. What was ordinarily good enough for continuing in service was not good enough once a person was married. She could remain in service, notwithstanding the general rule of termination on marriage, by showing extra ability in the past to assure the authorities of her ability to perform well in the future despite marriage.
7. The order relied on by the respondents, and which is in the nature of a departmental instruction, does not stand in the way of the appellant being retained in service, subject to her performance being reviewed at the end of two years, in terms of the order of the President of India made as early as 1968 reading as under:

"I am directed to state that, in supersession of the existing orders, the President is pleased to decide as follows in regard to the entry and retiring age of the MNS (Regular) Officers and their retention in service after marriage :-

(i) The upper age limit for entry in Permanent Commission will be 35 years.

(ii) The age limit for compulsory retirement for MNS (Regular) Officers of the rank of Colonel will be 57 years.

(iii) The MNS (Regular) Officers may be permitted to remain in service even after marriage at the discretion of the DG AFMS for a period of 2 years at a time. The cases of such married officers as are retained will also be reviewed by the DG AFMS periodically after every two years. The relaxation of the normal rules will be a temporary measure and the position will be reviewed by 1st January, 1970.

2. This letter issues with the concurrence of the Ministry of Finance (Defence) vide their U.O. No. 289-PA of 1968."

8. We are of the view that the respondents should have given the appellant chance to prove her ability in the two years following the marriage. If she succeeded in proving that she was good enough to remain in service, notwithstanding the marriage, if marriage was a handicap she was entitled to be retained in service in terms of the President's Order. But that opportunity was not given to her.

9. The appellant is entitled to prove that she can continue her efficiency record in the period after the marriage. She has to be given that opportunity.

10. The appellant, therefore, has to be back in service. It would be open to the respondents to discontinue her service in the event of her not being in a position to prove her ability in the two years which will begin to run from the date of her reinstatement in service.

11. In the circumstances of this case, we do not order payment of any arrears of salary. The appellant shall be reinstated in the position that she occupied at the time of her release from the service within one month from today.

12. If at the end of two years, or during that period, the respondents were to find that the appellant qualified for remaining permanently in service, she would then have the benefit of continuity of service for the period from 7-10-1988 till reinstatement for all purposes other than arrears of salary. We order accordingly. The appeal is allowed in the above terms. We make no order as to costs.

Appeal allowed.

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