

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.288 OF 2020

DISTRICT : MUMBAI

Smt. Vaishnavi Uttam Kumbhar,)
Age 32 years, occ. Staff Nurse in the office of the)
Superintendent, Cama & Albless Hospital, Mumbai)
R/o Diwan Gardens CHS, B Wing, 1st Floor,)
Flat No.39, Near Panchavati Hotel, Vasai (West),)
District Palghar)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Medical Education & Drugs Department,)
9th Floor, G.T. Hospital Complex Building,)
Mantralaya, Mumbai 400001)
2. The Director,)
Medical Education and Research,)
4th Floor, Govt. Dental College Building,)
St. George Hospital Campus, P. D'Mello Road,)
Mumbai 400001)
3. The Superintendent,)
Cama & Albless Hospital, Mumbai 400001)..Respondents

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Shri U.V. Bhosale – Advocate for the Applicants

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula R. Bhatkar (Chairperson)
Shri P.N. Dixit, Vice-Chairman (A)
DATE : 13th August, 2020
PER : Smt. Justice Mridula R. Bhatkar (Chairperson)

J U D G M E N T

1. This application pertains to reinstatement and joining of the services and about payment of salary and arrears to the applicant from 1.4.2018 till today.

2. The applicant joined Cama & Albless Hospital and started working as Staff Nurse from 28.2.2014. Initially as per medical examination report dated 9.9.2014 she was physically fit to work as a Staff Nurse. The applicant worked in the hospital till 23.11.2016 and thereafter she went on leave for gynaec problems. In continuation she went on maternity leave and she delivered a baby on 28.6.2017 and thereafter she reported for duty to respondent no.3 on 26.12.2017. However, she was not given posting. She was directed to appear for medical examination in J.J. Hospital on 12.1.2018 and her medical examination was conducted on 31.1.2018 wherein she was found Colour Blind. Thereafter her case was referred to Ophthalmic Medical Board in the month of February, 2018. After her examination she was confirmed Colour Blind and therefore she was not allowed to join as a Staff Nurse in the said hospital. She applied and approached to higher authorities from Medical Education Department to get herself joined in the hospital as a Staff Nurse. Finally her case was referred to a Medical Board and the medical board by report dated

5.5.2020 informed on her examination, "We considered Smt. Vaishanvi Uttam Kumbhar (applicant) completely and permanently incapacitated for further service of staff nurse as per opinion of B.R. in consequence Low Vision + Colour Blind" and also further informed that she is unfit to work and perform duties of Staff Nurse.


3. In the result, the services were terminated from 18.7.2018. Hence, this application.

4. Ld. CPO prays that more time is to be given for filing reply.

5. Notice was already served and direction to file reply was given on 2.7.2020 by this Tribunal. Considering the delay caused in this matter and as the case is of ignoring the provisos of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the said Act') we are not inclined to give further time to file reply.

6. Heard Shri U.V. Bhosale, learned Advocate for the applicant and Ms. S.P. Manchekar, Ld. Chief Presenting Officer for the respondents.

7. Pursuant to the order dated 2.7.2020, Ld. CPO submits that let the applicant move an application to the authority pointing out her qualification and on which post she can work as she is colour blind and working as Staff Nurse in Cama and Albless Hospital. Ld. Advocate for the applicant pointed out that Exh. F the letter dated 2.12.2019 is submitted by the applicant to the Superintendent, Cama & Albless Hospital. It was received on the same day by the Hospital. In the said application she has given all the factual details and has requested that she be allowed to join as a Staff Nurse in the Hospital.




8. No separate application or representation is required from the applicant to the respondents in this issue. The applicant consumed the maternity leave and is certified as Colour Blind As per the proviso one and two of Section 20 of the said Act, it is the duty of the establishment/Government to accommodate a disabled person and no discriminatory treatment to be given to disabled employee.

9. The respondents are from Medical Education Department hence all the more considerate treatment is expected from the concerned officers of respondents no.2 & 3. At this stage Ld. Advocate submits that one post of Medical Record Technician in Cama & Albless Hospital is vacant at present and reserved for a partially blind person.

10. Ld. CPO has submitted that the authority will take decision as per law and rules.

11. Adverting to the prayer clause 10 (c), (d) and (e) of the OA wherein the applicant has prayed for reinstatement and payment of salary and allowances from 1.4.2018, on going through the applications made by her and her attempt to join the services, we are of the considered view that services of the applicant should not have been terminated when protected under the proviso one and two of Section 20 of the said Act. However, on receiving the opinion of the medical board as she is found unfit her services were terminated by the respondents. It is a legal obligation of the authority under the said Act to give equal and appropriate treatment to the applicant, so also in view of the facts of the case, we direct as follows.

12. The order of terminations dated 18.3.2020 and 5.5.2020 are hereby quashed and set aside. The case of the applicant is to be considered by the respondents for appropriate posting in the said establishment and



services to be considered as continued service for the purpose of pay and allowances.

13. We are sure that respondents will take note of this order and also the object and spirit of the Rights of Persons with Disabilities Act, 2016 and accommodate the present applicant in the services at the earliest preferably within four weeks. OA disposed off. If such decision is not taken by the respondents then applicant is free to approach this Tribunal for contempt.

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
13.8.2020


Sd/-

(Mridula R. Bhatkar, J.)
Chairperson
13.8.2020

Dictation taken by: S.G. Jawalkar.

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