

(2014) 04 JH CK 0051

In the Jharkhand High Court

Case No : W.P. (S) Nos. 2942, 2950, 2955, 2978 of 2012 and 2837, 3284, 6423, 6449, 6665 of 2013

Amar Nath Pandey

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 7 AJR 191

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : K.P. Deo, Aashish Kumar and Ritesh Kumar, Advocate for the Appellant; Ajit Kumar, A.A.G., Prabhat Singh, J.C. to A.A.G., Rakesh Kumar Shani, Baleshwar Yadav, J.C. to S.C.I. and Sanjay Kumar Piprawal, Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the petitioners and learned A.G. appearing on behalf of the State, assisted by learned Junior Counsel.

2. The petitioners, in all these writ petitions, are doctors, who were engaged on contractual basis pursuant to a selection exercise concluded in the year 2003-04 and in the subsequent years by the respondent-State.

3. The common grievance of all the petitioners is that by a Notification dated 10th January, 2012, the Respondent-State had chosen to lay down upper age limit of 50 years for General Category Candidates while 52 years for the Reserved Category and Female Category and 53 years for those belonging to Handicapped Candidates in the matter of regularization of such contractually engaged Doctors. The said notification is under challenge in all these writ petitions. However, since the main ground for challenge, involved in all these writ petitions, is common, for the sake of convenience, the relevant annexures and pleadings, as reflected in W.P.(S) No. 2955 of 2012, is being noticed herein.

4. According to the learned counsel for the petitioners, the State Government

has framed a Rule vide notification dated 12th August, 2011, Annexure-5 for the purposes of regularization of such contractual Doctors serving under the State Government, which is named as Health Medical Education and Family Welfare Department Medical Cadre Regularisation of Contractual Engagement Rules, 2011. As per them under Rule 4(ga) of 2011 Rules, a provision was made for relaxation of upper age limit in the matter of regularization of such doctors to the extent of number of years that they had served as such under the Respondent-Government. The common refrain of all these petitioners is that on account of the amendment made in the said Rules in 2012, which is impugned herein, these persons have been refused regularization on the ground that they have crossed the upper age limit as prescribed thereunder. It is submitted that the petitioners have challenged the said amended Rules, inter alia, on the following grounds:

(i) That a legitimate expectation has arisen in their favour on account of continuous engagement, since their original selection as such on contractual basis, of being regularized in Government service which have been denied without any apparent reason of public policy;

(ii) That these petitioners had the benefit of age relaxation by virtue of Rule 4(ga) of 2011 Rules, which has vested in them and now been subsequently abrogated by the impugned amendment, which is bad in law;

(iii) That the fixation of upper age limit for regularization of such contractual doctors is without any rational basis;

(iv) That the State admittedly has dearth of Medical Officers/Doctors and on account of operation of the amended Rule, total 59 such Doctors including the petitioners have been put in disadvantageous position after having served for more than 10 years. Had they been regularized, the State would not have to bear much financial burden as they may not be even entitled for the benefit of pension etc. on account of the fact that they would not have spent the minimum qualifying service for availing the same. Still the respondents have chosen to deny them regularization by virtue of impugned Rules of 2012 which needs to be quashed.

5. In support of the aforesaid grounds of challenge, learned counsel for the petitioners has referred to a letter of the Health Secretary, Annexure-10 dated 14th October, 2005, that the same gave rise to the legitimate expectation in their favour. According to them, the import of the said letter indicated that they were supposed to serve even in contractual engagement as regular government servants, the violation of which would render them ineligible of being appointed under the State Government in future. Further submissions have been made in support of their contention that the State has dearth of Doctors and, therefore, the decision to fix upper age limit arbitrarily denies the petitioners' benefit of regularization. Learned counsel for the petitioners has also submitted that the State Government has no rational basis to fix upper age limit of 50 years which could have been 45 years or even 55 years without any prejudice to the State.

On these grounds the impugned notification has been challenged by the petitioners.

6. Learned A.A.G. appearing on behalf of the State has submitted that Rules of 2011 also if read independent of the amended Rules do not confer the benefit of regularization upon such persons like the petitioners as they could have got the maximum age relaxation for the number of years they have served, only reckoning the upper age limit, which is prevalent for direct recruitment to the medical cadre under the Respondent-State i.e. 35 years for General Category; 37 years for Reserved and Female Category and 38 years for the Handicapped Category. These petitioners, who are much beyond the permissible age of appointment, even as per the upper age limit prescribed for direct recruitment, could not have got the benefit of Rule 4(ga) of 2011 Rules being above of 44 and 45 years of age in individual cases. It is further submitted that the amendment to 2011 Rules was made with an object to lay down not only the upper age limit for regularization of such contractual doctors but also to remove hardship caused by operation of 2011 Rules. As such, persons who were above 45 and 46 years of age also could not have been regularized even after giving them relaxation of age in terms of Rule 4(ga). Therefore, the cut off age limit prescribed under the amended Rule has been done with an objective, to ensure that the persons, who are engaged on contractual basis do not suffer unreasonably because of an upper age limit fix for direct recruitment to such posts i.e. 35, 37 and 38 years in respective categories of cases. It is submitted that the Rule is neither arbitrary nor irrational and though it may entail hardship to some but has benefited a lot of other similarly placed candidates.

7. Learned counsel for the Respondents-State has, therefore, supported the impugned Rules and submitted that the petitioners, who are having much higher age, can in no way claim regularization under the respondent State. Therefore, the writ petitions should fail on the challenge to the amended Rule of 2012.

8. I have heard learned counsel for the parties and have gone through the relevant materials on record. At the outset, it is to be noticed that the petitioners were initially engaged on contractual basis in different years from 2003 onwards, which were made at the commissionerary level on the basis of interview. The terms and conditions of their contractual engagement, as are reflected in the agreement entered into between the individual petitioners and the authorities of the Respondent-State/Civil Surgeon of the concerned district, indicates that it was for a tenure of 2 years initially. It was further stipulated that the engagement is purely temporary and could be terminated if the services of such incumbents were not found to be satisfactory. It could also be terminated with 3 months' prior notice, if the services of such persons were not required. Clause 11 of one of such agreement, which is Annexure-3, also indicates that the concerned candidates could not claim any benefit of regularization on the basis of service provided on contract with them. The said engagements of these petitioners have further been extended by subsequent agreement for a period of

1 or 2 years in individual cases. One of such agreements is also annexed as Annexure-4 series and is dated 21st April, 2005 in the case of the petitioner in W.P.(S) No. 2955 of 2012. The instant agreement also contains similar conditions in relation to the tenure of their service and other conditions as indicated hereinabove. These petitioners therefore, in no circumstances can be said to have legitimate expectation on the basis of their initial contractual engagements of being regularized in services of the State. If a person enters into a temporary employment or gets engagement on the basis of contractual or casual basis, such a person can not invoke the theory of legitimate expectation for being confirmed in the post unless a proper procedure for such selection is prescribed by the employer in accordance with law and in consultation with tire selecting body like the J.P.S.C.

9. In the instant case, however, it appears that in the year 2011, the State Government framed a Rule for regularization of services of such contractual doctors. Under Rule 2(Ch) of 2011 Rules reference has been made to the Health Services (Recruitment, Promotion and other Service Conditions) Rule, 2010, as the Recruitment Rules, which are reflected in different provisions of 2011 Rules. Rule 4 of 2011 Rules prescribed the eligibility criteria for regularization of such contractual doctors. Rule 4(ka) prescribes that such contractual doctors need to fulfill the prescribed eligibility criteria laid down under Rule 2010. Rule 4(ga), prescribes that in the matter of regularization of such contractual doctors they would be entitled to relaxation in the upper age limit to the extent of number of years that they had served under the Respondent-State. Rule 5 prescribes for preparation of a selection list by J.P.S.C. on the basis of which such an appointment is to be made. The instant 2011 Rule, however, does not prescribe any upper age limit though it refers that the candidates seeking regularization are to fulfill the eligibility criteria under Rule 2010. Though the Rule of 2010 do not lay specifically down any upper age limit but it may be prescribed under the said Rules. It is not in dispute, in the matter of direct recruitment to the services of the State like the medical services, the upper age limit prescribed is 35 years for General Category, 37 years for Preserved Category, 38 years for Female Category and for Handicapped Category and 40 years for Scheduled Caste/ Scheduled Tribe Categories. By operation of Rule 4(ga), therefore, even if the case of the petitioners is accepted that could have got a relaxation upto the maximum period, which they had served under the Respondent-State on contract basis reckoning the upper age limit for direct recruitment to the said post of the Medical Officer under the Respondent-State, but even that would have rendered them ineligible for regularization in individual case where the concerned candidates would be above 45 years for general category and similarly 47, 48, 50 years for other categories.

10. In that sense, the argument of the learned A.A.G. appearing on behalf of the Respondent-State, appears to be convincing that if these petitioners were otherwise eligible under Rule 4(ga), the amended Rule. 2012 has not taken away the said right by prescribing upper age limit of 50/52/53 years for the respective

categories. Even reckoning 10 years from the year 2003 till 2013, these petitioners at the best could have got age relaxation upto maximum of 45/47 and 48 years in the respective categories. By operation of the amended Rule 1 of 2012, the petitioners could have got the benefit of regularization upto upper age limit 50, 52 and 53 years in their respective categories. Therefore, on that reason, challenge to the impugned Rule does not have much substance. So far as the fixation of upper age limit to any government service is concerned, it cannot be disputed that the employer/organization has a right to lay down the upper age limit for such recruitment.

11. In the instant case, it appears that the upper age limit for direct recruitment under the relevant Rule is 35, 37 and 3B years and also 40 years for the Scheduled Caste and Scheduled Tribe Categories as is informed by the learned counsel for the State and J.P.S.C. The impugned Rule makes a further relaxation of the upper age limit to the extent of 50 years for General Category and 52 and 53 years for the other respective categories. Therefore, laying down of an upper age limit under the amended Rule on that score cannot be found fault with. So far as question of rationality of laying down an upper age limit and cut off age for entering into the service is concerned, the petitioners have failed to produce any cogent material to establish a prima facie case that it violates Article 14 of the Constitution of India. Though analogy has been sought to be withdrawn to that of Para Medical Staffs, for whom upper age limit is said to have been prescribed as 60 years, as per the counsel for the petitioners (though there is no such materials on record), but these petitioners belong to totally different classes i.e. of Doctors. Class legislation on classification is permissible under Article 14 of the Constitution of India, unless it is shown to be arbitrary and unreasonable. The petitioners have obviously failed to establish any arbitrariness or unreasonableness in such classification.

12. In the wake of aforesaid facts and the reasons, recorded hereinabove, the petitioners, who may have crossed the upper age limit for regularization to the post of doctors/medical officers under the Respondent-State, have failed to make out a case for interference in the instant writ petitions. So far as the death of the doctors is concerned, it is within the policy matters of the State to choose source of recruitment and the manner in which is to be filled up. In the instant case, it is obvious that the respondents have chosen to regularize the services of the contract doctors and many of them have been benefited, as a result. Fixation of upper age limit or a cut off date in such circumstances often results in certain hardship caused to certain persons, who are on the other side and are adversely affected, that however cannot be a ground to quash the fixation of upper age limit or a cut off date unless it is demonstrably shown to be irrational, arbitrary.

13. Therefore, the petitioners have failed to make out any case for interference in these writ petitions, which are, accordingly, dismissed.

14. Consequently, the interim order dated 4.9.2013 passed in W.P.(S) No. 2955 of 2012 also stands vacated.