

(2013) 08 AHC CK 0163

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42131 of 2013

Anju Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Citation : (2013) 08 AHC CK 0163

Hon'ble Judges : Rajes Kumar, J and Manoj Misra, J

Final Decision : Dismissed

Judgement

Manoj Misra, J.

Heard Sri B.N. Singh, learned counsel for the petitioner and the learned Standing Counsel, appearing on behalf of the respondents.

By means of the present writ petition, the petitioner is seeking the following reliefs:

"I. Issue a writ, order or direction, in the nature of mandamus commanding the respondents not to deny duty to the petitioner on the post of Medical Consultant (Female) unless regular appointment is made by the University on the post of Medical Consultant (Female) by replacing from adhoc Medical Consultant.

II. Issue a further writ, order or direction to the respondents to treat the petitioner in service and pay salary and other benefits admissible to the post.

III. Issue any other writ, order or direction, which this Hon"ble Court may deem fit and proper in the facts and circumstances of the case.

IV. Award cost of the petition to the petitioner."

Briefly stated the facts, giving rise to the present petition, are that on 3rd July, 2009, the respondents issued a notice, inviting applications for the engagement/ appointment of Male and Female Doctors on contractual basis for a period of six months or till the regular appointment, whichever is earlier, pursuant to which,

the petitioner applied for such engagement/appointment. In pursuance of the aforesaid notice, interview was held in which the petitioner also participated and she has been appointed vide order dated 20th July, 2009 as a Medical Consultant (Female) on the contractual basis on the fixed remuneration of Rs.8,000/= per month for a period of six months or till the regular appointment of the Medical Officer, whichever is earlier. It appears that petitioner's engagement has been extended from time to time. Vide letter dated 17th July, 2012, the petitioner has been engaged for a period from 21st July, 2012 to 20th January, 2013, thereafter, vide letter dated 20th February, 2013, the petitioner has again been further engaged on the contractual with effect from 21st January, 2013 till the further appointment on the contractual basis/regular appointment. By the letter dated 24th July, 2013, Sameer Pal, Dean, Students Welfare, wrote a letter asking Krishna Kumar Pandey, to discharge the general duties of Human, Medical Clinic as the period of contractual engagement of Dr. S.K. Singh and Dr. Anju Pandey, the petitioner, has expired, till extension of their engagement or till fresh engagement on contractual basis is made.

Learned counsel for the petitioner submitted that denial of further engagement after 21st July, 2013 is wholly unjustified. He submitted that the respondents intent to engage some other Doctors on the contractual basis. It has further been submitted that by the letter dated 20th February, 2013, engagement of the petitioner on contractual basis has been extended till fresh selection on contractual basis/regular appointment is made. In the said letter expiry of the engagement of the petitioner on 21st July, 2013 is not mentioned.

Learned Standing Counsel submitted that the petitioner has been engaged on the contractual basis for a period of six months or till the regular appointment, whichever is earlier. Said engagement of the petitioner has been extended from time to time for a period of six months or till the regular appointment. By the letter dated 20th February, 2013, the engagement of the petitioner has been extended for a period of six months with effect from 21st January, 2013 or till the regular appointment. As per the order, the engagement could only be made for a period of six months and not beyond that. Therefore, the term of the engagement expired on 21st July, 2013. He submitted that the claim of the petitioner that the extension of the term of the engagement is still under consideration and the relief sought is wholly premature. By the letter dated 24th July, 2013, Sri Krishna Kumar Pandey has been asked to discharge the work of the general duties of the Human Medical Clinic till the extension of the contractual engagement of the petitioner. It is further submitted that the petitioner's engagement was only contractual, therefore, she cannot claim further extension as a matter of right.

We have considered rival submissions and perused the materials available on record.

There is nothing on record to suggest that the extension of the engagement of the petitioner has been denied by the respondents. By the letter dated 24th July,

2013, Sri Krishna Kumar Pandey has only been asked to discharge the work of the general duties of the Human Medical Clinic till the extension of the contractual engagement of the petitioner or till fresh engagement on the contractual basis. Thus, it appears that the extension of the petitioner has yet not been denied.

The Apex Court in the case of Secretary, State of Karnataka and others v. Umadevi and others : (2006) 4 SCC 1, has held that the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post. In this view of the matter, once the contractual period of appointment of the petitioner had expired, the petitioner cannot claim any right of continuance in service and she also cannot claim for renewal of her contractual appointment. Further, the learned counsel for the petitioner has not been able to show any provision of law under which the petitioner would be entitled to seek renewal of her term of appointment as of right.

In view of what has been discussed above, we decline to interfere in the matter and to issue any writ of mandamus as sought for. In the result, the writ petition, being devoid of merits, fails and is, accordingly, dismissed.