

(2005) 12 AHC CK 0135

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14470 of 2004

Arun Kumar and Ors.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 04-12-2005

Acts Referred:

Citation : (2005) 12 AHC CK 0135

Hon'ble Judges : Tarun Agarwala, J

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The services of a class IV employee in a State Medical College is governed by the Medical Education Subordinate Office Group 'D' (Technical Service) Regulation, 1991 framed under the proviso to Article 309 of the Constitution of India. The petitioners alleged that several vacancies existed in Moti Lal Nehru Medical College, Allahabad. The Secretary, Medical Education vide letter dated 20112002 directed all the Principals of the State Medical College to fill up the backlog vacancies with regard to Schedule Caste, Schedule Tribe and other backward classes. It is alleged that based on the aforesaid directions, the Principal published an advertisement dated 20112002 in two newspapers inviting applications from the candidates belonging to the Schedule Caste and Schedule Tribes and other backward classes for filling up 21 Class IV posts in Moti Lal Nehru Medical College, Allahabad. The petitioners applied and appeared before the Selection Committee and, on the basis of the select list, the petitioners were issued appointment letters on 1022003. The petitioners allege that based on the appointment letters, they joined and worked till 2822004 and, thereafter, the petitioners were not allowed to work nor were permitted to sign the attendance register. According to the petitioners, the Principal issued a letter dated 2122004 to all the heads of the department directing them not to take work from the petitioners as, on the basis of the appointment letters, their services had come to an end on 1722004 and that the validity of their appointments was also under consideration before the High Court and that further directions would be issued on the basis of the orders passed by the High

Court. The petitioners, therefore, filed the present writ petition praying for the quashing of the order dated 2722004 and further praying that they may be permitted to continue in the service.

2. During the pendency of the writ petition, the petitioners filed an amendment application stating therein that the respondents issued an advertisement on 1312005 advertising the same vacancies in which the petitioners were working. The petitioners contended that since there was a requirement of work, the petitioners should be allowed to continue instead of making fresh appointments. The petitioners, therefore, prayed that the advertisement dated 1512005 issued by the Chief Medical Superintendent, Swarup Rani Medical Hospital Allahabad be quashed and a mandamus be issued directing the respondents not to appoint any person against the post held by the petitioners. The aforesaid amendment was allowed and the necessary amendments were incorporated in the writ petition. Since no counteraffidavit was filed by the respondents, this Court issued an interim order dated 2712005 restraining respondent No. 3 from making any appointments on the Class IV posts pursuant to the advertisement dated 1212005.

3. Heard Sri Ashok Khare, the learned Senior Counsel assisted by Sri P. N. Ojha for the petitioners, Sri Kapil Kumar, Advocate for respondent No. 3 and the learned Standing Counsel for the remaining respondents.

4. The learned Counsel for the petitioners submitted that the vacancies were substantive in nature and therefore, their appointments could not be made temporary or ad hoc and that such appointments were arbitrary and opposed to public policy. The learned Counsel submitted that the advertisement did not mention that the appointments were to be made on an ad hoc basis or on a temporary basis. The petitioner's further submitted that the vacancies were advertised to fill up the backlog of the vacancies in the Schedule Caste/ Schedule Tribes and other backward classes and such appointments was permanent in nature. In support of his submission the learned Counsel placed reliance on the following decisions :

(a) 1999(3) UPLBEC 2263, Ravi Karan Singh v. State of U.P. & Ors..

(b) 1996(2) LBESR 672 (All) : 1996(4) SCC 560, Himachal Pradesh Road Transport Corporation v. Dinesh Kumar.

(c) 1997(1) LBESR 75 (SC) : 1996 (6) SCC 394, Hindustan Aeronautics Ltd. v. A. Radhika Thirumalai (Smt.).

(d) 1999 SCC (L&S) 729, Orissa State Electricity Board v. Raj Kumari Panda.

(e) 1986 (3) SCC 156, Central Inland Water Transport Corporation Ltd. & Anr. v. Brojo Nath Ganguli & Anr.

5. Taking up the first submission raised by the learned Counsel for the petitioners, there is nothing to indicate that the vacancies were substantive in

nature. The advertisement dated 20112002 does not indicate that the posts which were to be filled up was substantive in nature. Therefore, I am of the view that the vacancies were not substantive in nature. Consequently, the second submission of the learned Counsel for the petitioner that temporary appointments could not be made on substantive posts is without any merit. Even otherwise, there is no embargo that a substantive appointment has to be made on a substantive vacancy. In a given circumstance, ad hoc appointments can be made on substantive vacancies and such appointments cannot be said to be against public policy.

6. The third submission of the learned Counsel that the appointments were made in order to fill up the backlog of vacancies for Schedule Caste and Schedule Tribes and other backward classes and such appointments, necessarily was on a substantive post. The argument raised by the petitioner is devoid of any merit. In the first instance, the advertisement dated 20112002 does not indicate that the posts are being filled up in order to remove the backlog. The advertisement does not indicate that the same was published pursuant to the direction of the Secretary Medical as contained in his letter dated 20112002. In any case, appointments made in the present case was only for a limited period and such appointments were not made on substantive vacancies.

7. The judgments cited by the learned Counsel for the petitioners are not applicable. Appointments made on compassionate ground has been treated to be one of a permanent appointment, but the same analogy cannot be made with regard to the filling up of the backlog vacancies.

8. This takes as to the nature of the appointments. From a perusal of the appointments letters, it is clear that the petitioners were appointed on an ad hoc basis for a limited period, i.e. up to 1722004. The appointment letters clearly indicated that the appointments was purely temporary in nature. The appointment of the petitioners was up to 1722004 and the appointment came to an end automatically on the expiry of the period. Therefore, there is nothing wrong in the order dated 2722004 issued by the Principal of the college informing all the heads of the department, that the services of the petitioners automatically came to an end on 1722004.

9. In *Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain & Ors.*, 1995(1) LBESR 253 (SC) : 1995 (1) SCC 638, the Supreme Court held

?A plain reading of these two orders will go to show that the appointments were made purely on temporary basis and their services were liable to be terminated at any time without notice or assigning any reason. In the case of appointment on temporary basis a servant who is so appointed does not acquire any substantive right to the post, even though the post itself may be permanent and it is an implied term of such appointment that it may be terminable at any time and without, notice.?

10. From the aforesaid, it is clear that even where a post is permanent, the

incumbent does not acquire a substantive right where his appointment was made purely on a temporary basis. The aforesaid judgment squarely applies to the present case. The petitioners were appointed purely on a temporary basis and further their appointments were for a limited period which came to an end on the expiry of the aforesaid period.

11. There is another aspect which requires consideration. The appointment letter states that the appointment of the petitioners was purely temporary and was for a limited period upto 1722004. The petitioners knew that their term of appointment was limited upto 1722004. The petitioners, consciously accepted the terms and conditions of the contract of employment. They did not make any protest. In my view, it is no longer open to the petitioners to challenge the terms and conditions of their contract of employment on the ground that it was opposed to public policy after the period had come to an end on the ground. If the petitioners were aggrieved by the terms and conditions of their appointment letters, they should have challenged the said appointment at the initial stage itself, and it was no longer open to the petitioners to challenge the said condition after the expiry of the period. The petitioners were aware that their term would come to an end on 1722004. After the expiry of the period, the petitioners cannot turn around and question the terms and conditions of the appointment order as being arbitrary or unfair. In my opinion, the petitioners are estopped from raising this issue after having accepted the terms of the contract of employment. In my view, the decision of the Supreme Court in Brojo Nath Ganguly's case (supra) is clearly distinguishable.

12. In so far as the advertisement dated 1212005 is concerned, it is clear that the advertisement was issued by the Medical Superintendent of Swarup Rani Hospital inviting applications for filling up certain vacancies of Class IV posts. These vacancies are totally different from the vacancies in which the petitioners had worked. These vacancies have nothing to do in so far as the petitioners are concerned. The advertisement dated 1212005 was issued by the Medical Superintendent for filling vacancies in the Swarup Rani Hospital whereas, the petitioners were appointed in Moti Lal Nehru Medical College, Allahabad.

13. Even though the Swarup Rani Hospital is a constituent of the Moti Lal Nehru College, the appointing authorities are different. In the case of the petitioners, the appointing authority for a Class IV post is the Principal of the Medical College, whereas, for the hospital, the appointing authority is the Medical Superintendent. The submission of the petitioners that they were appointed on the same post as had now been advertised on 1212005 was not only incorrect, but misleading.

14. In view of the aforesaid, the petitioners having being appointed purely on a temporary basis and that too for a limited period have no right to hold the said post. Consequently, the petitioners are not entitled to any relief. The writ petition is devoid of any merit and is dismissed. The interim order, granted earlier by this Court is vacated. However, there shall be no order as to cost.