
(2014) 04 JH CK 0006
In the Jharkhand High Court
Case No : W.P. (S) No. 2974 of 2013

Bharti Sinha

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Citation : (2014) 3 JLJR 8

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Atanu Banerjee, Advocate for the Appellant; Kumar Vaibhav, Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. In the present case, the petitioner, who was engaged on contractual basis under the respondent-Government of Jharkhand in the year 2005 as per the appointment letter dated 10.5.2005, Annexure-2 has sought for a direction upon the respondents to regularize her services under the respondent-Government of Jharkhand in terms of the provision of the Regularization Rules of 2011 framed by the respondent-Department of Health, Medical Education, and Family Welfare, Government of Jharkhand. However, admittedly the petitioner has entered into another contractual engagement under the Jharkhand Rural Health Mission Society (in short JRHMS), Namkum, Ranchi on the post of Specialist Medical Officer (Paediatrician) as per the appointment letter dated 18.1.2011. On names being called from the office of Civil Surgeon, Koderma and other district by the respondent-department of such serving contractual doctors though her name was recommended by the Civil Surgeon, but the petitioner apprehended that her name was not recommended to the Jharkhand Public Service Commission to undertake an exercise of interview etc. for regularization of her services. The reason for her apprehension was, since she had incurred another contractual engagement under the Jharkhand Rural Health Mission Society, Namkum, Ranchi on the post of Specialist Medical Officer (Paediatrician), the respondent would not

regularize her services in the general cadre of the Health Department. Therefore, she has approached this Court for a proper direction upon the respondents.

2. As per the respondents, the petitioner was required to fulfill the criteria laid down under the Rules of 2011 specially Rule 4 thereof, which prescribed the eligibility criteria for regularization of such contractual doctors. According to the respondents, the petitioner, who was initially under contractual engagement in the general health cadre under the respondent department, has chosen to apply for and appointed under the Jharkhand Rural Health Mission Society, Namkum, Ranchi on the post of Specialist Medical Officer (Paediatrician). It is the case of the respondents that she did not fulfill provision of Rule 4(kha) of the 2011 Rules, which required continuous engagement under contract till the date of regularization under the respondent-Government of Jharkhand apart from minimum 5 years of such contractual engagement. Learned counsel for the respondents has referred to the terms of the original contractual engagement of the petitioner as per the appointment letter dated 10.5.2005, Annexure-2 whereunder she was required to serve in the Primary Health Centre like any other contractual doctors in the concerned district i.e. Koderma in her case. The petitioner has, however, incurred another engagement in a Referral Hospital under NRHM which does not entitle her for such regularization of contractual doctor under the respondent department.

3. The petitioner, in response, has stated that the present engagement of the petitioner is also a contractual engagement under the State Government as would evident from the reading of the fresh appointment letter dated 18.1.2011, Annexure-5, which has been issued by the Director Health, Jharkhand Rural Health Mission Society, Namkum, Ranchi. According to the petitioner, the said engagement continues in concerned district where she has submitted her joining to the Civil Surgeon. Therefore, the respondents are not justified in refusing to consider her case for regularization under the 2011 Rules.

4. I have heard learned counsel for the parties and have gone through the relevant materials on records. The exercise of engagement of doctors on contractual basis was undertaken by the Government of Jharkhand, Department of Health & Family Welfare, Government of Jharkhand through advertisement issued from time to time, one of which is annexed as Annexure-1 and apparently is of the year 2004. The advertisement itself was issued in view of the certain direction passed by this Court in a writ petition for which a contempt case No. 910 of 2004 was also pursued. The said engagement apparently was to fill up large number of vacancies in the general cadre in the various district and sub-divisional hospital within the State of Jharkhand which had resulted in lack of adequate medical facility to people at large. The persons like the present petitioner, who were engaged on contractual basis, were required to serve as such in the concerned district i.e. the Primary Health Centre and the Referral Hospital on the post of Medical Officer as evident from the appointment letter of the petitioner. The petitioner apparently did continue for some time. However, on

an advertisement being issued i.e. Adv. No. 05/2010 for the post of Specialist Medical Officer for rural posting in NRHM, she participated and got selected for Specialist Medical Officer (Paediatrician) on contract basis. The petitioner left her earlier contractual engagement and entered into a fresh contractual engagement for the post of Specialist Medical Officer (Paediatrician) as is evident from the appointment letter dated 18.1.2011, Annexure-5. The instant contractual engagement was also for a period of one year subject to further extension on satisfactory performance. The persons so engaged were required to enter into the contract of service with the District Rural Health Mission Society and the approved salary were also to be disbursed through the District Rural Health Mission Society. In effect, because of a fresh contractual engagement of the petitioner, her continuance in original contractual engagement with the Government of Jharkhand in the hospitals in the general health cadre of the respondent department came to an end. The present engagement of the petitioner obviously was with the NRHM on the post of Specialist Medical Officer (Paediatrician) and not on the vacancy existing in the general cadre for doctors in the respondent-department in the State of Jharkhand for which original exercise was undertaken from 2004 onwards by the respondents. Apparently Rule 4(kha) of the 2011 Rules which do prescribe eligibility criteria for such regularization indicates that not only contractual doctor has to complete 5 years of such engagement, but such person was required to continue in such contractual engagement till the date of regularization while inviting the names from the concerned district. The respondent department had also made a categorical stipulation to the concerned district authorities that before sending the name, they should verify as to whether such doctors are working under contractual engagement or have left the job and rejoined once again. Apparently though the name was sent by the Civil Surgeon, Koderma of the petitioner alongwith others but the petitioner had left the earlier contractual engagement to enter into a fresh contractual engagement with the NRHM as aforesaid. The respondents, therefore, may be justified for not considering the case of the petitioner as she had not remained in continuous contractual engagement with the respondent department. The 2011 Rules had been framed to consider the case of contractual doctor, who had been engaged under the exercise initiated since 2004 for the existing vacancy of the general health cadre and who during the course of time would have gone over age and were raising claim for regularization as they are serving in the respondent department. Therefore, the background for framing of the said Rule and the object and the purpose for the said rule framed have to be kept in mind as well while interpreting the provision of Rule 4, which prescribes the eligibility criteria for regularization of such contractual doctor. The petitioner apparently does not fulfill the laid down criteria as per Rule 4(kha) having left contractual engagement of the respondent department and chosen to take another contractual engagement under the NRHM which is a society under the Central Government, Ministry of Health. Therefore, the petitioner has failed to seek issuance of any direction upon the respondent to consider her case for regularization under 2011 Rules. Accordingly, the writ petition is dismissed.