
(2019) 11 JH CK 0079
In the Jharkhand High Court
Case No : Writ Petition(S) No. 576 of 2019

Dr. Ashutosh Tigga

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 13-11-2019

Acts Referred:

Jharkhand Service Code, 2001 — Section 58

Citation : (2019) 11 JH CK 0079

Hon'ble Judges : Dr. S.N. Pathak, J

Bench : Single Bench

Advocate : R.S. Mazumdar, Kumar Vaibhav, Chaitali C. Sinha

Final Decision : Dismissed

Judgement

The petitioner has approached this Court for quashing of the letter dated 25.04.2018 signed on 23.05.2018 (Annexure-6), whereby and whereunder the regularization of service of the petitioner for the time period from 03.11.2009 to 23.05.2010 has been declined by the respondents. Further, prayer has been made to regularize the services of the petitioner for the period from 03.11.2009 to 23.05.2010 with all consequential benefits.

The factual exposition as has been delineated in the writ petition is that the petitioner was appointed as Medical Officer on 22.10.2009 at Sadar Hospital, Pakur as he was declared successful in the Medical Examination conducted by Jharkhand Public Service Commission and was directed to represent before the concerned Department within one month. Pursuant thereto, the petitioner on 03.11.2009 made representation before the Civil Surgeon cum Superintend of Sadar Hospital, Pakur to provide him an appointment as Medical Officer at Sadar Hospital, Pakur and same was received on 03.11.2009 by the respondents. Thereafter, Civil Surgeon cum Chief Medical Officer, Pakur intimated to the Joint Secretary of the concerned department that presently there are 7 post for Medical Officer at Sadar Hospital, Pakur and no vacant seat is available for the petitioner and same was also communicated to the petitioner. Subsequently, the

petitioner represented before the Joint Secretary with respect to his grievances on 05.11.2009. It is specific case of the petitioner that thereafter, he was provided posting in Primary Health Centre (Now Community Health Centre), Gumla vide communication dated 18.05.2010. In the said letter, it was categorically acknowledged by the State that as there were no vacant post available, the petitioner as well as other Medical Officers could not perform their duties. Pursuant thereto, the petitioner joined on 24.05.2010 at Primary Health Centre, Raydih, Gumla and since then he was working. It is further case of the petitioner that he represented on 12.02.2014 before the Principal Chief Secretary, Department of Health, Education and Family Welfare Department, Jharkhand for regularization of his services for the period from 03.11.2009 to 23.05.2010 as the petitioner could not perform his duties as there was no vacancy at Sadar Hospital, Pakur for no fault of the petitioner. But the respondents vide letter dated 25.04.2018 signed on 23.05.2018 contained in Memo No. 4/Chutti-01-70/14 304 (4), rejected the application of the petitioner stating that as the petitioner was not provided with any charge/posting for the aforesaid period, the regularization of the petitioner is not possible in view of Rule 58 of the Jharkhand Service Code. Aggrieved by the same, the petitioner has been constrained to knock the door of this Court for redressal of his grievances.

Mr. R. S. Mazumdar, learned Sr. counsel assisted by Mr. Kumar Vaibhav, learned counsel appearing on behalf of the petitioner submits that impugned order dated 25.04.2018 is not tenable in the eyes of law as the petitioner was never responsible for not joining the post of Medical Officer, it was only on the instance of the respondent that he could not join the post and as such, he is entitled for salary of that period and regularization of the services for the period from 03.11.2009 to 23.05.2010 with all consequential benefits. Learned Sr. counsel further argues that services of other similarly situated persons have been regularized and they have been extended the benefit of salary. Learned counsel for the petitioner places heavy reliance on the judgment of this Court in case of Dr. Ram Naresh Jha Vs. State of Jharkhand & Ors. and argues that similar order may be passed considering the aforesaid judgment.

Per contra, counter-affidavit has been filed. Mrs. Chaitali C. Sinha, learned counsel appearing on behalf of the respondents vehemently opposes the contention of the learned counsel for the petitioner and submits that the case relied upon by the learned counsel for the petitioner is not applicable in the instant case as it is case of the waiting for posting whereas that case was regarding regularization of period of absence. It is settled principle of law that seniority of the employees is counted from the date of joining. The petitioner after his selection joined the post on 24.05.2010 at Gumla and as such, he is entitled for the benefits i.e. seniority as well as other benefits from the date of joining i.e. 24.05.2010 and not before his joining. Justifying the impugned order, learned counsel for the respondents submits that there is no illegality or infirmity in the impugned order and as such, writ petition itself is devoid of any merit and

is fit to be dismissed.

Be that that it may, having gone through the rival submissions of the parties, this Court is of the considered opinion that no case is made out for interference. Admittedly, the petitioner had joined the post after direction issued by the respondents, accepting the terms and conditions of the appointment letter. The Clause- IV of Notification dated 22.10.2009, which is the appointment letter of the petitioner clarifies that salary etc. shall be paid from the date of joining. The joining of the petitioner has been accepted on 24.05.2010 and salary of the petitioner has been paid in consonance with Clause -IV of the appointment letter. The judgment relied upon by the learned counsel for the petitioner is of no help to him as it talks of unauthorized absence at the hands of the respondents. There is no illegality or infirmity in the impugned order and as such, there is no merit in the case.

Resultantly, writ petition stands dismissed.