

(2021) 10 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8115 Of 2020

Dr. Shankar Pandit

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 01-10-2021

Acts Referred:

Bihar District Ayush Medical/State Ayush Medical Service (Appointment on Regular/Contract Basis and Service Conditions) Rule, 2010 — Rule 4(a), 4(e), 10, 16
Bihar District Ayush/State Ayush Medical Service (Appointment on Regular/Contract Basis and Service Conditions) (Amendment) Rules, 2017 — Rule 2

Citation : (2021) 10 PAT CK 0004

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Bindhyachal Singh, Baua Jha, Amit Kumar, Nikesh Kumar

Final Decision : Dismissed

Judgement

1. Heard Mr. Bindhyachal Singh, learned Senior Counsel appearing on behalf of the petitioners, Mr. A.C. to G.A.-10 for the State of Bihar and Mr. Nikesh Kumar, learned counsel representing the Bihar State Technical Service Commission.

2. The petitioners have sought for following reliefs : -

"(i) For holding and declaring that the petitioners, who were appointed on contract basis in July/August, 2010 were included in the District Ayush Medical cadre in terms of Rule-4 (a) and Rule-10 of the Bihar District Ayush Medical/State Ayush Medical Service (Appointment on Regular/Contract Basis and Service Conditions) Rule, 2010.

(ii) For holding and declaring that when Rule-4 (e) which provided for contractual appointment in the District Ayush Medical cadre has been deleted by 2017 amendment to the 2010 Rules and made provisions for regular appointment in the cadre, the services of the petitioners stood absorbed in the District Ayush Medical cadre in terms of Rule-10 of the 2010 Rules.

(iii) For necessary direction upon the respondent authorities to make fresh appointments in terms of 2017 amendment to the Rules after leaving apart the posts on which the petitioners are working, which are 1384 in number inasmuch as the Bihar Technical Service Commission has issued a press communique on 11-09-2020 that they are going to make appointment on 3270 posts of Ayush doctors.

(iv) For necessary direction upon the respondent authorities to grant all the consequential benefits of a regular employee in the District Ayush Medical cadre w.e.f. the date of notification of 2017 amendment to the 2010 Rules.

(v) For necessary direction upon the respondent authorities to make advertisement after reducing the number of 1384 posts on which the petitioners and other similarly situated persons are working.

(vi) For any other direction, which your Lordships may deem fit and proper in the facts and circumstances of the case."

3. The petitioners hold BHMS qualification. According to them, they were appointed on contractual basis as Ayush Doctors on the basis of an advertisement issued in 2008 after following the reservation policy applicable in the State of Bihar. They were appointed in different districts. They contend that after their joining, Bihar District Ayush/State Ayush Medical Service (Appointment on Regular/Contract Basis and Service Conditions) Rules, 2010 (For short 2010 Rules), came into force, Rule 4 of which provided that Ayush Doctors working in Additional Primary Health Centers, Primary Health Centers and State Dispensaries (Ayurved, Unani & Homeopathic) shall be in District Ayush Medical Cadre. Appointment to the district cadre, under the said Rules, was to be made on contractual basis and they were to work for a minimum period of two years. However, in case of satisfactory service, their services were to be extended. No permanent appointment was to be made in the cadre. Rule 10 of the Rules further provided that all Ayush Doctors, who were appointed and working prior to coming into force of the Rules, would be deemed to be included in the cadre. Rule 16 of the Rules provided that all concerned departmental notifications/ resolutions would be deemed to have been repealed to the aforesaid extent with effect from the date of coming into force of the Rules. It is accordingly their case that by operation of Rule 4(a) read with Rule 10 of the 2010 Rules, the petitioners, who were appointed on contractual basis and were working in Additional Primary Health Centers and Primary Health Centers should be deemed to be included in the District Ayush Medical Cadre. It is further case of the petitioners that subsequently the State Government notified the Bihar District Ayush/State Ayush Medical Service (Appointment on Regular/Contract Basis and Service Conditions) (Amendment) Rules, 2017 [For short '(Amendment) Rules, 2017']]. Rule 2 of the (Amendment) Rules, 2017 substituted Rule 4(e) of the 2010 Rules by making provision for the regular appointment in District Medical Ayush Cadre on the basis of the recommendation of the Bihar Public Service Commission (For short, 'the Commission'). Thus, the earlier

provision of contractual appointment and the provision that no permanent/temporary appointments would be made in the District Ayush Medical cadre as the same existed in 2010 Rules, was done away with. These amended Rules provided a different type of selection process containing weightage of marks against various qualifications and work experience and 15 marks for interview. In the '(Amendment) Rules, 2017', Rule 4(a) and Rule 10, as it existed before, remained untouched. It is the petitioners' case accordingly that admittedly they were working in the Additional Primary Health Centers. Therefore, since Ayush Doctors working in Additional/Primary Health Centers, by a deeming fiction, stood included in the District cadre and since the provision of contractual appointments and the clause that no permanent/temporary appointments would be made in the cadre, stands deleted, by making provision for regular appointments, services of these petitioners stood regularized by operation of 2010 Rules as amended by (Amendment) Rules, 2017.

4. Mr. Bindhyachal Singh, learned Senior Counsel for the petitioners, has argued that the petitioners stood regularized in the District Ayush Medical Cadre by operation of Rule 4(a) and Rule 10 of 2010 Rules. He submits that clause (e) of Rule 4 of the 2010 Rules in its original avatar prescribed that the District Ayush Medical Cadre Doctors can be selected on contractual basis only and shall work for at least two years. Because the said provision was subsequently amended in 2017, deleting the provision of contractual appointment for District Ayush Medical Cadre Doctors, by operation of Rule 10 of the Rules, the petitioners stood included in the Cadre in 2017. By yet another amendment in the year 2021 in the 2010 Rules, Rule 10 has been amended stipulating that contractual appointee Medical Officers are not included in the Medical Cadre.

5. Mr. Bindhyachal Singh has contended that this amendment fortifies the case of the petitioners on two counts; firstly, it recognizes the fact that prior to amendment in the year 2021, the contractual appointees were entitled to be included in the cadre in view of the unamended provisions of Rule 10 of 2010 Rules and, secondly, the amendment has been made with prospective effect and, therefore, it recognizes right of the petitioners to be included in the cadre from the date of coming into force of the '(Amendment) Rules, 2017'.

6. In the counter affidavit filed on behalf of the State of Bihar, it has been stated, inter alia, that the petitioners were appointed in July/August, 2010 on contractual basis and the terms of their engagement specifically mentioned in their respective appointment letters that they would not claim for their regular appointment. It is their case that 2010 Rules have no application in respect of contractually appointed Ayush Medical Doctors (like petitioners). It is stated in the counter affidavit that though it is not in dispute that the petitioners were appointed on contractual basis under the terms and conditions of 2008 advertisement, Rule 10 of 2010 Rules will have no application in case of these petitioners.

7. In reply to the said counter affidavit, it has been stated on behalf of the

petitioners that Rule 4(a) of the 2010 Rules, as it existed then, provided that all the Doctors working in Additional Primary Health Centers, Primary Health Centers and Government Dispensaries would be in the cadre of District Ayush Medical Cadre. It has been stated that in terms of Rule 10 of 2010 Rules, the Doctors already working prior to coming into force of the Rules automatically stood included in the service.

8. The Commission in its counter affidavit has simply stated that it is the policy of the State Government, which has to prevail in such matters and the Commission has no role to play in respect of the dispute raised by the petitioners in this case.

9. The basic facts that the petitioners were working on contractual basis in Additional Primary Health Centers and Primary Health Centers are not in dispute. The only issue, which requires determination in the present case, is the effect of framing of the 2010 Rules, which came into force with effect from 22.12.2010 and subsequent amendments introduced in 2017 and 2019.

10. Originally, sub-Rule (e) of Rule 4 of 2010 Rules read as under : -

"(e) In the District Ayush Medical Cadre, doctors shall be selected on contract basis and shall work for at least two years. On their satisfactory services, extension of service may be made. All posts of this Cadre shall be filled on contract basis and no permanent/temporary appointment shall be on these posts. The services shall be extended after satisfactory performance. Doctors of this Cadre can be transferred any where in the concerned district."

11. Sub-rule (a) of Rule 4 of 2010 Rules reads as under :

"(a) All doctors working in Additional Primary Health Center, Primary Health Center and State Dispensary (Ayurved, Unani & Homeopathic) shall be in District Ayush Medical Cadre. All Doctors working in Referral Hospital, Sub-Divisional Hospital, Sadar Hospital, Hospitals of Medical Colleges of Ayush sector. State Ayurved & Unani Pharmacy and research unit, Doctors of State Ayush Medical Service Specialist Sub-cadre of clause (b) of Rule-5 of chapter -3, Incharge Medical Officer, Dy Superintendents and first Medical officer of PH.C and Referral Hospital shall be in State Ayush Medical Cadre."

12. Rule 10 of the Rules read as under : -

"10. All Ayush Doctors appointed on the basis of seniority and working prior to the coming into force of these Rules, shall be automatically deemed to be included in this service."

13. If the case of the petitioners is to be accepted, by application of Rule 4(a) of the Rules, they can be treated to be in District Ayush Medical Cadre on contractual basis. Sub-Rule (e) of Rule 4 was substituted by amendment Rule 2017. The aforesaid amendment in 2017, by no stretch of imagination, can be said to be having a consequence that persons working on contractual basis under

sub-rule (a) of Rule 4 shall automatically become permanent employees under the Rules. The substituted sub-Rule (e) of Rule 4 by amendment Rule 2017 was apparently for the purpose of giving preference to those who were working on contractual basis, after adopting a process of selection as provided therein.

14. If the petitioners are desirous of joining District Ayush Medical Cadre Rules on regular basis, they will have to undergo the selection procedure as prescribed in sub-Rule (e) of Rule 4 of the Rules.

15. For the aforesaid reasons, I do not find the petitioners' case to be tenable.

16. This application is accordingly dismissed.

17. However, there shall be no order as to costs.