

(2011) 12 AHC CK 0098
In the Allahabad High Court
Case No : Writ A No. 70546 of 2011

Dr. Shishir Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2011) 12 AHC CK 0098

Hon'ble Judges : Sunil Ambwani, J; Manoj Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. By this writ petition the petitioner, appointed as Medical Officer on contract, which was renewed from time to time, and expired in September, 2011, has claimed a right to continue as provided in the Government Order dated 10.2.2011.

2. In the Government Order dated 10.2.2011, after quoting three interim orders passed by the Lucknow Bench of this Court directing that the Medical Officers, Ayurvedic and Unani appointed at Community Health Centres working on contract basis to be allowed to continue, the State Government has decided that those doctors, whose contract had come to an end, will be allowed to continue on the same terms and conditions, and that if no vacancy is available in the same District, they may be appointed in another district.

3. We find that none of the writ petitions, of which the interim orders have been quoted, have been decided, nor learned counsel for petitioner has pointed out any final decision of the High Court, by which the rights of medical officers appointed on contract basis to continue, have been heard and decided.

4. The reference made by Shri K. Ajit, learned counsel appearing for the petitioner, to the judgment in Dr. Devendra Pratap Singh and others vs. Union of India 2011 (7) ADJ 169 (DB) (LB) is not applicable as in that case the Court was

considering the rights of appointees appointed on contract in National Rural Health Mission Scheme. The Division Bench proceeded on the basis of arbitrariness, and the judgment in E.P. Royappa Vs. State of Tamil Nadu and Another, that the doctors appointed on contract under the scheme will continue until the scheme lasts.

5. Prima facie we find that the judgment in Dr. Devenera Pratap Singh's case may be applicable to the appointment on contract in a scheme, the appointment on contract in the State Government employment on vacancies to be filled up by direct recruitment under statutory service rules, are two different methods of taking work from the qualified persons on contract. A scheme has a end in sight, whereas in the case of public employment made in exigency of service, when the Public Service Commission is not able to fill up the vacancies, the appointments must be made in accordance with the statutory rules. Any violation thereof will be violative of Articles 14 and 16 of the Constitution of India.

6. From 1996 onwards the Supreme Court has decided several cases taking a complete departure from the earlier view to continue contractual or adhoc employees. A contractual employee does not have a right to continue except in accordance with the terms of contracts. If there is any renewal clause, the contractual employee may request for renewal or apply afresh for a fresh contract. He cannot be allowed to continue under the interim orders of the Court on the pretext of some hardships. Such interim orders, in any case, cannot be the basis of making any policy decision by the State Government.

7. Let the State file reply and explain the circumstances, in which the Government Order dated 10.2.2011 was issued. The State will also provide information as to whether any regular recruitment for these posts under the statutory rules is pending.

8. The Standing Counsel will file counter affidavit within two weeks.

9. List on 22.12.2011. A copy of the order be given to Chief Standing Counsel for compliance.