

(2019) 03 UK CK 0132

In the Uttarakhand High Court

Case No : Writ Petition (S Of B) No. 128 Of 2019

Dr. Sudhanshu Pant

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 28-03-2019

Acts Referred:

Citation : (2019) 03 UK CK 0132

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : Alok Mahra, Monika Pant

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. The petitioner has invoked the jurisdiction of this Court seeking a writ of certiorari to quash the impugned termination order dated 01.03.2019; a writ of mandamus commanding the respondents to extend him appointment as per the stipulation made in the agreement executed between him and the Station Commander; and a writ of mandamus restraining respondent nos. 3, 4 & 5 from taking any action contrary to the instructions issued by the second respondent vide letter dated 24.05.2011, and to permit the petitioner to continue in service till he attains the age of superannuation of 65 years.

2. Facts, to the limited extent necessary, are that the Central Government launched an Ex-Servicemen Contributory Health Scheme (ECHS) in the year 2003. The object of the Scheme was to provide quality healthcare to ex-servicemen / pensioners and their dependents through a network of ECHS polyclinics spread across the country. The Scheme was so structured as to provide cashless treatment for its beneficiaries. The treatment provided in ECHS was as per the Allopathic medical system, and was a Government funded Scheme.

3. The Central Organisation, ECHS is located at Delhi, and is said to function under the Chiefs of Staff Committee through the Adjutant General in the integrated Headquarters of the Ministry of Defense.

4. The petitioner, a graduate in Dental Surgery, was appointed on contractual basis as a Dental Officer in the ECHS Polyclinic, Karanprayag, Chamoli district, by order dated 15.11.2018. While the contract was initially for a period of 11 months, it provided for a mutual extension for a period of upto two years. Though the petitioner was appointed on 15.11.2018, his services were terminated by the impugned order dated 1st March, 2019 informing him that his services would not be required from 31st March, 2019. Aggrieved thereby, the present writ petition.

5. Sri Alok Mahra, learned counsel for the petitioner, would draw our attention to the policy guidelines of the ECHS, framed on 22.12.2017, Clause 9 of which stipulates that the duration of the contractual employment was two years, and a second year extension was to be granted based on the satisfactory performance in the first year. He would also draw our attention to the manning document dated 10.01.2019, as amended on 29.01.2019, to submit that, as against two authorized posts of Dental Officers in the polyclinic at Karanprayag, it was decided to allow NIL Dental Officers. Learned counsel would submit that premature termination of the petitioner's services, even before completion of the contract period of eleven months, is arbitrary; and it runs contrary to the law declared by a Division Bench of this Court in Writ Petition (S/B) No. 122 of 2018 dated 19.09.2018.

6. On the other hand Ms. Monika Pant, learned Standing Counsel appearing on behalf of the respondents, would submit that, since a decision was taken not to have any Dental Officer in ECHS Polyclinic at Karanprayag, the petitioner's services were dispensed with; the contractual conditions stipulate that the services can be terminated by giving one month's notice; likewise the person engaged on contractual basis is also entitled to resign by giving one month's notice; unlike in Writ Petition (S/B) No. 122 of 2018 dated 19.09.2018 wherein the posts were continued and the dispute related to whether the Organisation could terminate the services of a contractual employee, only for him to be replaced by another, in the present case the ECHS does not wish to have any Dental Officer at its Polyclinic at Karanprayag.

7. As noted hereinabove, the petitioner was appointed on contractual basis by order dated 15.11.2018, which reads as under:

"Station HQ Joshimath

PIN-900298

C/o 56 APO

502/ECHS/KPG/Emp

of

Staff/Stn(i)

15 Nov 2018

Dr. Sudhanshu Pant,
C/o OM Dental Clinic
Rudraprayag
P.O. Rudraprayag.
District Rudraprayag (Uttarakhand)
PIN - 246111.

APPOINTMENT LETTER DENTAL OFFICER ECHS,
POLYCLINIC KARANPRAYAG

1. The ECHS appoints Dr. Sudhanshu Pant as Dental Officer for ECHS Polyclinic at Karanprayag. You are requested to join duty by 16 Nov 2018.
2. The appointment is purely contractual and temporary in nature. Your appointment will be on a period of eleven months w.e.f. 16 Nov 2018 to 18 Oct, 2019. For any further extension beyond the period, sanction of competent authority will be obtained.
3. You will be admissible contractual remuneration (Lum Sum) Rs. 75,000/- (Rupees Seventy Five Thousand Only) per month and not other financial gains. For your services you will not be entitled for pension including disability and family pension, free ration, non practicing allowances, transport allowances, accommodation of HRA, medical allowances, kit maintenance or any other allowance as entitled to Govt. employee. You will not be entitled to medical benefits under the ECHS unless you have been granted ECHS membership as prepaid down procedure.
4. You will devote your full time, skill and attention to promote the interest of the ECHS. You will work for 48 hours a week and adhere to the timings and working hours of the pending so laid down by the Station Commander. You will attend to any medical emergencies which may fall at any time outside ordinary working hours as and when the need arises.
5. You will be entitled to leave 27.5 days during the contractual period of eleven months however you will not avail leave without prior sanction of the Station Commander.
6. You will work under the direction and supervision of the Station Commander. You will carry out of the assignment and duties as detailed in the charter of duties issued with this appointment and any other duties associated with your profession as may be entrusted to you, by the Station Commander from time to time.

7. You shall not work with any other hospital / health services or organization during the period of contractual employment with ECHS. Any such activity would be treated as misconduct on your part.

8. The ECHS may terminate this appointment by giving one month notice to you or salary relief thereof on any of the following:-

- i- Professional incompetence or misconduct.
- ii. Unsatisfactory performance of duty.
- iii. Arrest or conviction in a criminal case.
- iv. Acts prejudicial to security.
- v. Medical illness or absence due to other grounds.
- vi. Inadequate work load.

9. You may also terminate this appointment before the expiry of this term by giving one months notice or by foregoing one month's salary.

10. You will conduct yourself in a professional manner and will not indulge in any malpractices, unethical practices, financial misappropriation or administrative irresponsibility etc. you will be liable for appropriate legal administrative action in case of any breach in professional conduct.

11. Working hours of the Polyclinic will be as under:-

(a) Summer (Apr to Oct) -08:00AM to 4:00PM

(b) Winter (Nov to Mar) - 08:30 AM to 4:30 PM

(AK Pundir)

Brig

Stn Cdr"

8. Clause 8 of the aforesaid order dated 15.11.2018 enabled ECHS to terminate appointment by giving one month's notice to the employee, or salary in lieu thereof, for, among others, inadequate work load. Likewise, Clause 9 enabled the employee to terminate the appointment, before expiry of the term, by giving one month's notice, or by foregoing one month's salary.

9. In the present case, the order of termination dated 1st March, 2019 states that, by proceedings of the Central Organisation of ECHS dated 10.01.2019, the post of Dental Officer at ECHS Polyclinic, Karanprayag has been disallowed; a mandatory notice of 30 days is required to be given to all those appointments which are working, with ECHS Polyclinics, in posts which were not allowed in the current manning document of ECHS; and, therefore, this advance notice was served on the petitioner to terminate his contractual appointment.

10. The reason for terminating the petitioner's services is that the Central Organisation ECHS, by proceedings dated 10.01.2019, has disallowed the post of Dental Officer at ECHS Polyclinic, Karnprayag. Unlike in Writ Petition (S/B) No. 122 of 2018, wherein the Division Bench has specifically observed that it was not the case of the respondents that the post of Dental Officer has been abolished, or that there was no requirement of Dental Surgeon at ECHS Polyclinic, Bageshwar, in the present case, it is evident that the Central Organisation, ECHS had decided not to have any Dental Officer at its ECHS Polyclinic, in Karnprayag.

11. It is not as if the services of the petitioner are sought to be substituted by any another contractual appointment. This Court would not take upon itself the task of determining whether or not ECHS Polyclinic at Karanprayag requires the services of a Dental Officer, as decisions, regarding whether or not to have a Dental Officer in a particular polyclinic, are for the concerned employer to take. As the petitioner's services were terminated strictly in accordance with the conditions of the contract, we see no reason to entertain this writ petition. Suffice it to make it clear that, in case the services of Dental Officers are again sought to be engaged at the ECHS Polyclinic, Karanprayag, the petitioner would also be entitled to be considered for appointment in accordance with law.

12. Subject to the aforesaid observations, the writ petition fails and is, accordingly, dismissed. No costs.