

(2001) 03 GUJ CK 0018

In the Gujarat High Court

Case No : Special Civil Application No. 5270 of 2000 and Special Civil Application No"s. 5271 of 2000 and 4522 of 1999

Girish U. Shah and Others

APPELLANT

Vs

O.N.G.C. and Others

RESPONDENT

Date of Decision : 02-03-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2004) 24 GLH 278 : (2001) 21 GLH 539

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Advocate : Rajni H. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

D.C. Srivastava, J.—These three petitions involving common questions of law and fact are proposed to be disposed of by a common judgment. Dr. G.U. Shah, petitioner of SCA No. 5270/2000 has sought three reliefs. The first is for quashing the impugned advertisement Annexure "A1 to the petition. Secondly, to issue a writ of mandamus directing the respondent-Corporation to continue the petitioner on the present post and a further mandamus directing the respondent-Corporation to regularise the services of the petitioner, in view of the fact that he is in continuous service of the respondent-Corporation for 14 years.

2. Same reliefs have been sought by Dr. Ashok v. Tiwari, petitioner of SCA No. 5271/2000.

3. In SCA No. 4522/99, the petitioner Dr. Dayarani Sharma has sought reliefs praying for quashing the order dated 18-6-1999 Annexure "H" and a writ of mandamus directing the respondent-Corporation to continue the petitioner on the present post, as if, no order of termination has been passed, with further mandamus directing the respondent-Corporation to regularise the services of the present petitioner, in view of the fact that she is in continuous service of the

respondent-Corporation for 14 years with further mandamus directing the respondent-Corporation to forthwith appoint the petitioner on the vacant post of Homoeopathic Doctor, on the terms and conditions on which other doctors have been appointed.

4. The facts in SCA Nos. 5270/2000 and 5271/2000 are identical.

5. Dr. G.U. Shah, petitioner of SCA No. 5270/2000 applied for the post of Homoeopathic Doctor, and after due interview he was selected and appointed as such vide letter of appointment Annexure "B" dated 7-6-1986. Since then, he was continuing in service of the respondent-Corporation. By letter dated 6-1-1987, his services came to be extended with effect from 16-12-1986 vide Annexure "C". By subsequent order dated 1-2-1988, his services were extended till December 1988 with effect from 1-1-1988. On 14-2-1992, the respondent-Corporation published advertisement for appointing Medical Officers, Homoeopathy. The petitioner again applied for the post and he was selected and appointed. It is alleged that the advertisement and total appointment process was made and conducted by the ONGC to bring about an artificial break in the services rendered by the petitioner. By order dated 28-2-1992, the petitioner was appointed as part-time Homoeopathic Doctor. By order dated 27-9-1996, the petitioner was again appointed with effect from 1-10-1996 for a period of two years. He was working in ONGC Colony Dispensary for three hours on a fixed remuneration of Rs. 3,000.00 vide Annexure - "F", which was subsequently enhanced to Rs. 4,000.00. On 17-6-1999, ONGC had published advertisement in Times of India for appointing Ayurvedic and Homoeopathic Doctors for treating their employees vide Annexure "G" dated 17-6-1999. Petitioner appeared for interview in response to this advertisement and again his services were continued till the date of filing the petition. In this way, the petitioner worked for continuous period of 14 years in the respondent-Corporation. No complaint was received against him during this period of 14 years. The petitioner requested time and again for regularisation of his service under the Corporation. In the year 1999, the respondent got an agreement signed from the petitioner, whose copy was not given to him. It was alleged that the respondent-Corporation was going to terminate the services of the petitioner and replace him by temporary doctor. It has been alleged that this action of the Corporation is violative of Articles 14 and 16 of the Constitution of India, inasmuch as, the petitioner, who has served for continuous period of 14 years, is proposed to be terminated from service, and that his request for regularization was not considered.

6. Dr. Ashok V. Tiwari, petitioner of SCA No. 5271/2000 has also made the same grievances. He was appointed as Ayurvedic Doctor with the Corporation on 7-6-1988 and thereafter, his appointment was extended from time to time and he served for continuous period of 14 years. He also made request for regularization of his service, but with no result. On the other hand, he apprehended that his services will be terminated by the respondent-Corporation in view of the impugned advertisement Annexure "A", through which, new

doctors were to be appointed replacing the petitioner.

7. Dr. Dayarani Sharma, petitioner of SCA No. 4522/99 has alleged in her petition that she was appointed as Homoeopathic Doctor by the ONGC in the year 1986 on 7-6-1986 in pursuance of advertisement published in the year 1985. Since then, she was working as part-time Doctor getting fixed remuneration of Rs. 600-00 per month. Her services were also extended wide order dated 6-1-1987 with effect from 16-12-1986 vide Annexure -"C" and then, by order dated 1-2-1988 her services were extended till December 1988 with effect from 1-1-1988. On 14-2-1992, the Corporation published advertisement in Gujarati Newspaper for appointing Medical Officers, Homoeopathy. The petitioner again applied and was appointed on the post. By order dated 28-2-1992, she was appointed as part-time Doctor with effect from 1-3-1992 and was to get fixed remuneration of Rs. 1, 750 per month. Pursuant to advertisement dated 31-5-1996, she again applied for the post of Homoeopathic Doctor and was appointed vide order dated 27-9-1996 as part-time doctor with effect from 1-10-1996 for a period of two years on a fixed remuneration of Rs. 3,000.00 per month, which was subsequently enhanced to Rs. 4,000.00 per month. On 17-6-1999, another advertisement was published by the Corporation for appointment of Ayurvedic and Homoeopathic Doctors vide Annexure-"G". On 18-6-1999, the petitioner received order from respondent No. 2 abruptly terminating her services. The order of termination is alleged to be illegal and arbitrary, which was passed without application of mind, inasmuch as, there were three clear posts when the interview was conducted, and one post was kept vacant without any reason. The name of the petitioner in the select list was at Serial No. 1 and since one post was vacant, the respondent ought to have appointed the petitioner on the vacant post.

8. The stand of the respondent has been that, the two petitioners Dr. G.U. Shah and Dr. Ashok V. Tiwari were engaged as part-time doctors on contract basis on monthly consolidated payment under an agreement and this agreement came to an end on 30-6-2000, hence they are not entitled to be retained in service and there arose no question of regularizing their services. It is also the case of the respondent that since the petitioners aforesaid applied for part-time contractual job, they are stopped from claiming regularization or continuing on the post after expiry of contractual period. The petitioners aforesaid accepted with full knowledge, part-time engagement on contract basis, hence they are stopped from making the alleged grievances.

9. The case of the respondent in the petition of Dr. Dayarani Sharma in the counter-affidavit is that, pursuant to advertisement published on 17-6-1999 Annexure "G", Ayurvedic and Homoeopathic Doctors were to be engaged for attending part-time job, giving consultations and treatments to ONGC employees and their dependent family members for one and a half hours in the morning (9: 00 a.m. to 10: 30 a.m.) and one and a half hours in the evening (5: 00 p.m. to 6: 30 p.m.) at consolidated monthly payment of Rs. 4, 500.00. There were four

posts, two for Ayurvedic Medical Practitioners and two for Homoeopathic Practitioners. After assessment of work, these posts were reduced to two and now, only one post for Ayurvedic Practitioner and one for Homoeopathic Practitioner is kept. Moreover, these two posts are already filled in. The petitioner applied in pursuance of advertisement dated 17-6-1999 and she was at Serial No. 2 in the waiting list. The candidate at Serial No. 1 in the waiting list and she will be engaged as and when further engagements are required to be created for such contractual part-time jobs. Since the petitioner was engaged on contract basis as part-time Homoeopathic Medical Practitioner, her services cannot be regularised without following statutory procedure for regular full time appointment, as provided in Rules of Recruitment and Promotion of 1993. Since the petitioner accepted appointment with full knowledge, that it was part-time engagement on contract basis, she is stopped from making allegation or any grievance and her services cannot be regularized.

10. Shri B.P. Tanna, learned senior Counsel representing all the three petitioners and Shri Rajni H. Mehta, representing the respondent were heard at length.

So far as the cases of Dr. G.U. Shah and Dr. Ashok V. Tiwari are concerned, they are identical. Their point for consideration is, whether they were temporary employees or they were part-time employees of the Corporation and whether their services are liable to be regularized simply because they have put in 14 years continuous service as part-time employees of the Corporation. It has also to be seen what is the effect of the agreement between the Corporation and Dr. G.U. Shah and Dr. Ashok V. Tiwari. The agreement is dated 12-7-1999. It is duly signed by the petitioners. The agreement in question is not in dispute.

11. Clause-1 of the agreement provides that the medical doctor will render service to the ONGC for a period of one year from 12-7-1999 and the same shall stand terminated on 11-7-2000 without any further notice.

12. Clause-8 of the agreement provides that, either party to this agreement may terminate this agreement by giving to the other party 30 days notice in writing of his intention to do so, and on the expiry of such notice, this agreement shall be determined/terminated, provided the ONGC may pay to the medical doctor 30 days remuneration in lieu of such notice and thereupon this agreement shall stand determined/ terminated forthwith.

13. Clause-11 of the agreement provides that except the remuneration/benefits/terms mentioned hereinabove, the medical doctors shall not be entitled to claim regularization in employment or any other benefits, terms whatsoever either during the period of engagement or after the termination of this agreement. This is the model pro forma which was signed by Dr. Tiwari also. Consequently, in view of clause-11 of the agreement, the two petitioners aforesaid are not entitled to claim regularization in the employment or to claim any other benefits whatsoever. Clause-8 of the agreement provides for termination of agreement at the instance of either party to the agreement, provided that 30 days notice in

writing is given to the other side, and if the agreement is to be terminated forthwith by the Corporation, the Doctor is entitled to 30 days remuneration in lieu of notice. Clause-1 of the agreement makes it clear that the appointment was from 12-7-1999 for a fixed period of one year, which was to stand terminated on 11-7-2000 without any notice. However, Shri Rajni H. Mehta informs that, notice was given to the two petitioners and services stood terminated with effect from 30-6-2000 vide Annexure-II. On these facts, Shri Rajni H. Mehta contended that, it was a temporary part-time employment given to the two petitioners for a period of one year ending on 11-7-2000 without further notice, and if notice was not to be given and termination of agreement was to be intended forthwith then 30 days remuneration was to be paid to the doctors. He, therefore, rightly contended that the two petitioners having undertaken part-time temporary appointment for a fixed period are now stopped from claiming regularization -- more particularly, in view of clause-11 of the agreement.

14. Shri B.P. Tanna has drawn my attention to various Annexures filed alongwith the writ petition and argued that the agreement was result of legal advise, which has no binding effect. This contention cannot be accepted because, the agreement is signed by the petitioners and witnesses have also signed the same. The petitioners are not illiterate persons, who can avoid signed agreement on the pretext that they did not know its contents.

15. Coming to the nature of Appointment, Shri Tanna, referring to various Annexures filed alongwith the writ petition, contended that it was part-time temporary appointment which continued for a continuous period of 14 years and as such, it could not be terminated. In my opinion, previous appointments which were given for a fixed period are not relevant. The latest appointment in pursuance of agreement dated 12-7-1999 has to be considered and it has to be determined what was the nature of appointment under this agreement. Perusal of the agreement shows that it was appointment on contract basis for a fixed period of one year. The duty hours in Clause-5A of the agreement also show that it was part-time temporary employment. Previous employments which were periodically extended will have no effect on the subsequent agreement dated 12-7-1999. Even, para 2 of the Annexure "A" provides that, agreement is to be entered for job on contract basis. Other terms and conditions will be as per agreement to be signed by the candidate. Annexure "B" dated 7-6-1986 addressed to Dr. Ashok V. Tiwari clearly shows that he was appointed in the year 1986 as part-time Medical Officer (Ayurvedic) for ONGC, Mehsana on contract basis for a period of six months. It was clearly provided that his appointment was purely temporary and can be terminated at any time without notice and assigning any reasons whatsoever. Duty hours mentioned in para 2 of Annexure "B" clearly show that it was part-time temporary appointment.

16. Annexure "C" also indicates that appointment was for a fixed period of six months.

17. Annexure-"D" which granted extension and continuance of employment of the petitioners also clearly indicates that it was part-time temporary appointment. Shri Tanna emphasized that in this order, there is mention that for part-time doctors there will be regularization, but this is not so. What is mentioned is that, the payment of the services rendered by the other side part-time doctors for the period from 16-6-1997 (which should be 1986) to 31-12-1987 will be regularized as per the letters referred to above. Consequently, the regularization mentioned in this order relates to regularization of payment of services rendered by the part-time doctors and not regularization of their services.

18. Annexure "E" also shows that the petitioners were appointed purely on contract basis for a fixed period of six months, which can be discontinued at any time without notice and assigning any reason whatsoever.

19. Annexure "F" also shows that the appointment was purely on contract basis for a period of two years with effect from 1-10-1996. It is clearly mentioned in it that the engagement will be purely temporary on contract basis for a period of two years and can be discontinued at any time without notice and assigning any reason. Shri Tanna argued that the word "negotiation" mentioned in this letter indicates that there were negotiations for regularizing the services of the petitioner. However, Shri Rajni H. Mehta rightly argued that negotiations related to enhancement of remuneration and not for regularization of services of the petitioners.

20. Annexure "G" also shows that the job is purely contractual and does not carry any liability on ONGC for regular appointment at any stage. An agreement is to be entered for job on contract basis. In view of these two stipulations in Annexure "G", it can be said that the ONGC openly disclosed its stand that it does not carry any liability for regular appointment at any stage and agreement has to be entered for job on contract basis. Thus, agreement cannot be read in isolation. The appointment was in pursuance of execution of agreement and such appointment was purely temporary on contract basis.

21. In Annexure "J" addressed to Dr. Ashok V. Tiwari again the same stand is taken by the Corporation that the engagement will be purely temporary on contract basis for a period of one year and can be discontinued at any time without notice and assigning any reason.

22. Thus, from the above Annexures, it is clear that the appointment of Dr. Shah and Dr. Tiwari was purely contractual, part-time and temporary, and in terms of agreement dated 12-7-1999, the said temporary appointment came to an end on 11-7-2000. Moreover, since notice of intention to terminate the agreement was given in writing by the Corporation vide Annexure-II, the agreement stood terminated with effect from 30-6-2000, and as such, these two petitioners are not entitled to claim regularization, nor any mandamus can be issued in their favour directing the respondents to continue these two petitioners on the present

post, nor direction can be given to the Corporation for regularizing their services. I do not find any reason to quash the advertisement Annexure "A". Thus, these two petitioners are not entitled to any relief.

23. So far as the case of Dr. Dayarani Sharma is concerned, her appointment was also purely temporary, part-time and based on contract and agreement. Her appointment could be terminated at any time without any notice and without assigning any reason, for which Annexure "B" can be referred.

24. Clause - 2 of Annexure "B" shows that it was part-time temporary appointment. Other Annexures "C", "D", "E" and "F" are almost identical to those annexures, which have been discussed in the foregoing portion of this judgment. I do not find any reason or ground for quashing advertisement Annexure "G".

25. So far as termination order Annexure "H" is concerned, it clearly speaks that the part-time service on contract basis of the petitioner was discontinued with effect from afternoon of 30-6-1999 after expiry of contract period.

26. In the counter-affidavit at para 7, it is mentioned that earlier there were four posts, two for Ayurvedic Medical Practitioner and two for Homoeopathic Medical Practitioner, and after assessment of work, these posts were reduced to two, one for Ayurvedic Medical Practitioner and the other for Homoeopathic Medical Practitioner and these two posts are already filled in. In pursuance of advertisement dated 17-6-1999 and selection, petitioner Dr. Dayarani Sharma figured at Serial No. 2 in the waiting list. The candidate at Serial No. 1 was engaged, and as such, the name of Dr. Dayarani Sharma is now at Serial No. 1 in the waiting list. It is stated in para 8 of the counter-affidavit that, as and when further engagements are required to be created for such contractual part-time job, since she is at Serial No. 1 of the waiting list, she will be engaged on a contract basis for part-time job as Homoeopathic Medical Practitioner. Thus, as there is no vacancy to absorb the petitioner Dr. Dayarani Sharma on part-time contractual and temporary basis, her services were required to be terminated.

27. Shri Rajani H. Mehta, Learned Counsel for the respondents has argued that, after the impugned advertisement, no doctor has been appointed, and now the Corporation does not require the services of part-time and temporary doctors because, the system of reimbursement of medical bills to the employees has been introduced and the employees and their dependents can get medical aid from any doctor of their choice. In view of this stand of Shri Mehta, it is clear that the relief sought by Dr. Dayarani Sharma also cannot be granted. Neither the advertisement can be quashed, nor the order dated 18-6-1999 Annexure "H" terminating her temporary part-time services can be quashed. Further, no direction can be given to the respondent-Corporation to continue this petitioner on the present post, as if no order of termination has been passed, nor any direction can be given to the respondent-Corporation to regularise her services simply because she has served the Corporation on part-time temporary basis for

14 years.

28. I do not find any violation of Arts. 14 and 16 of the Constitution of India in these three petitions. Consequently, the above three writ petitions have no merit and are liable to be dismissed. Special Civil Application Nos. 4522/ 1999, 5270/2000 and 5271/2000 are hereby dismissed with no order as to cost.