

(2022) 11 GAU CK 0014

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 8779 Of 2019

Imran Hussain Khan

APPELLANT

Vs

State Of Assam And 2 Ors.

RESPONDENT

Date of Decision : 10-11-2022

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 307, 325, 326, 341, 354, 371, 379, 447

Citation : (2022) 11 GAU CK 0014

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : B Islam, B. Gogoi

Final Decision : Disposed Of

Judgement

1. Heard Mr. B Islam, learned counsel for the petitioner. Also heard Mr. B Gogoi, learned counsel for the Health Department.

2. The petitioner has prayed for setting aside the impugned Order dated 30.10.2019 issued by the Mission Director, National Health Mission, Assam, by which the petitioner's prayer to rejoin his service as a Pharmacist in the Rashtriya Bal Swasthya Karyakram (RBSK), Boitamari PHC in Bongaigaon District has been rejected.

3. The petitioner's case is that the petitioner was initially appointed as a Pharmacist in the RBSK, Boitamari PHC in Bongaigaon District, vide Order dated 01.03.2014, on contract basis for the period from 05.03.2014 to 31.03.2017. However, the petitioner was arrested on 09.08.2016 in connection with Abhayapuri P.S. Case No. 347/2016 under Sections 147/148/149/447/341/325/326/354/307/379/371 of the IPC. The petitioner was released on bail on 12.09.2016. The petitioner thereafter wrote a letter dated 17.09.2016 to the respondent No. 3 praying that he should be allowed to rejoin his post/duty. The petitioner's letter dated 17.09.2016 praying to rejoin his post

was forwarded to the respondent No. 2 by the respondent No. 3 vide letter dated 30.11.2016.

4. The petitioner was thereafter, acquitted from the charges levelled against him, vide Judgment dated 11.02.2019 passed by the Court of Sub-Divisional Judicial Magistrate (M), North Salmara, Abhayapuri. The petitioner thereafter wrote a letter dated 26.02.2019 to the respondent No. 2 praying that he should be allowed to rejoin his duty, as he has been acquitted from the charges levelled against him. No action being taken by the respondents, the petitioner filed WP(C) No. 2509/2017.

5. WP(C) No. 2509/2017 was disposed of vide Order dated 11.04.2019, by directing the respondent authorities to consider the petitioner's representation dated 26.02.2019 to allow him to rejoin his duty and to pass appropriate orders in terms of the observations and directions mentioned in the Order dated 11.04.2019.

The relevant paragraph Nos. 4 to 9 of the order dated 11.04.2019 passed in WP(C) No. 2509/2017 are reproduced below:-

"4. The contention of the petitioner is that since the petitioner was wrongly implicated in the said case and accordingly, he was discharged from service, he could not be faulted for the break in service which had occasioned because of arrest and the trial before the Court.

5. Accordingly, after being discharged from the aforesaid criminal case, he submitted an application on 26.02.2019 to the authority for allowing him to re-join the service. Unfortunately, authorities have not responded to the same because of which the petitioner has approached this Court.

6. This Court is of the view that, though a contractual employee has no vested right to continue in service, in the present case, the break in service was occasioned due to certain criminal case which was foisted upon him in which he has been acquitted and as such, the break in service was not due to any deliberate act on the part of the petitioner but due to reasons beyond his control.

7. If that is so, if similarly situated persons who were appointed on contractual basis have been allowed to continue and the service of the Pharmacist is still required, the authorities will consider taking the petitioner back break in service so that he may be allowed to continue in service as Pharmacist as was done on the earlier occasions.

8. Ms. A. Borah, learned counsel for the State respondents submits that since the contractual period of the petitioner has already expired, there is no vested right on the part of the petitioner to seek reinstatement in service. However, as mentioned above, this direction would be compliable only if other contractual Pharmacists/ employees have been continued in service as the petitioner also would have continued in service had he not been implicated in the criminal case from which he has now been acquitted.

9. Accordingly, the present petition is disposed of with a direction to the respondent authorities to consider the said representation submitted by the petitioner on 26.02.2019 and pass appropriate orders in terms of the observations and directions mentioned above, within a period of one month from the date of receipt of a certified copy of this order.”

6. As can be seen from the Order dated 11.04.2019, this Court had held that though a contractual employee had no vested right to continue in service, the break in service of the petitioner was occasioned due to a criminal case and that the authorities could consider taking back the petitioner in service if similarly situated persons were allowed to continue and the service of the petitioner was still required.

7. In compliance with the order dated 11.04.2019 passed in WP(C) No. 2509/2017, the respondent No. 2 issued the impugned order dated 30.10.2019, which states that the State Level Committee under the chairmanship of the Executive Director, NHM, Assam had assessed the pharmaceutical knowledge of the petitioner and found that he did not have the basic knowledge of a Pharmacist to work in public health facilities dealing with “patient community”. The impugned order also states that as the petitioner was not on duty since 09.08.2016, due to his arrest till his acquittal and as the petitioner’s contract period had expired on 31.03.2017 he was not treated as in service and was not eligible for any relief.

8. The petitioner’s counsel submits that as the petitioner’s break-in-service during his contract period was occasioned due to the criminal case foisted upon him, in which he had been acquitted and as the persons who were initially engaged with the petitioner on 01.03.2014 have had their contractual engagement extended, the petitioner should be allowed to rejoin his duty, by extending his contract period.

9. Mr. B Gogoi, learned counsel for the respondents submits that the petitioner’s contract period having expired on 31.03.2017, the petitioner does not have any vested right to rejoin his duty and in this regard, he has relied upon the judgment passed by this Court in the case of Ajoy Kumar Haloi vs. State of Assam & Ors., reported in 2014 (3) GLT 420. He also submits that, as reflected in the impugned order dated 30.10.2019, the petitioner does not have the basic knowledge of a Pharmacist and it would un-reasonable to allow him to deal with patients in the rural areas. Mr. B Gogoi, thus submits that the only recourse left to the petitioner, for any alleged breach of contract or termination of service of the petitioner, would be to file a civil case for payment of damages as held by this Court in the case of Ajoy Kumar Haloi (supra).

10. Mr. B Islam, learned counsel for the petitioner had been granted adjournments to produce citations in support of his submissions. However, he has not been able to produce any citations till date. He submits that the finding of the State Level Committee under the Chairmanship of the Executive Director,

NHM, Assam, to the effect that the petitioner did not have basic knowledge as a Pharmacist was patently wrong, inasmuch as, the petitioner had been selected and appointed to work as a Pharmacist on contractual basis by the NHM, Assam vide letter dated 01.03.2014. He accordingly submits that as the respondents are still in need of a Pharmacist, as similarly situated persons who had been initially appointed along with the petitioner on contractual basis are still continuing, a direction should be issued to the respondents to allow the petitioner to continue in service as a Pharmacist.

11. I have heard the learned counsels for the parties.

12. This Court in *Ajoy Kumar Haloi Vs. State of Assam & Others*, reported in (2014) 3 GLT 420 held that irrespective of the question as to whether the termination of the services of the petitioner is illegal or not, the core question to be determined is whether the writ petition is overtaken by time and has, ipso facto, becomes infructuous. This Court further held that the period of engagement of a contractual employee cannot be extended by the Court, as the legitimate function of the State respondents cannot be usurped if there was any breach of contract in the termination of the service of the petitioner, it may give rise to a cause of action for damages/compensation, for which the remedy available is a civil suit and not a writ petition.

13. In the case of *GRIDCO Ltd. Vs. Sadananda Doloi* (supra), the Apex Court has held that though a writ Court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality with respect to termination of a contractual engagement, judicial review cannot extend to acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the armchair of the administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by illegality, perversity, unreasonableness, unfairness or irrationality and so long as the action is not demonstrably in outrageous defiance of logic, the writ Court would do well to respect the decision under challenge.

14. In the case of *U.P. State Textile Corporation Ltd. Vs. Suresh Kumar*, reported in (2011) 15 SCC 180, the Apex Court has held that when the appointment was for a fixed period of 3 (three) years, no relief beyond the period could have been given by the Tribunal or the High Court.

15. In the present case, the petitioner was engaged on contractual basis for a period of 3 (three) years from 05.03.2014 to 31.03.2017. However, due to the petitioner being made an accused in a criminal case, the petitioner was arrested and prior to the petitioner being acquitted of the charges vide Judgment dated 11.02.2019 by the Criminal Court, the petitioner's engagement ended on 31.03.2017.

16. In the light of the judgment of the Apex Court in *GRIDCO Ltd. Vs. Sadananda*

Doloi (supra), it cannot be said that the non-extension of the engagement of the petitioner is illegal, perverse, unreasonable, unfair or irrational. Just because similarly situated persons have had their contractual period extended beyond 31.03.2017, does not give the petitioner any vested right to have his contractual engagement extended. In the case of U.P. State Textile Corporation Ltd. Vs. Suresh Kumar (supra), the Apex Court held that no relief beyond the contract period can be given by the Tribunal or the High Court, as the appointment itself was for a fixed period. Thus, in terms of the judgment of the Apex Court in U.P. State Textile Corporation Ltd. Vs. Suresh Kumar (supra), no relief for extension of his engagement period can be given by this Court. The question of considering extension of the petitioner's contractual period had been left to the discretion of the respondent authorities in terms of the Order dated 11.04.2019 passed in WP(C) No. 2509/2017. However, the respondent authorities declined to allow the petitioner to rejoin his duty, on the ground that he did not have the basic knowledge of Pharmacist, to work in public health facilities dealing with the patient community. As the question of competence of the petitioner as a Pharmacist is best left to the experts, keeping in view the fact that this Court is not equipped to deal with the said issue, this Court cannot substitute its views, with the views made by the State Level Committee under the Chairmanship of the Executive Director, NHM, Assam.

17. The stand taken by the respondents that the petitioner does not have the basic knowledge of Pharmacist is surprising, inasmuch as, the petitioner had been initially appointed as Pharmacist in the Rashtriya Bal Swasthya Karyakram (RBSK), Boitamari PHC in Bongaigaon District vide Order dated 01.03.2014, on contract basis by the respondents herein. If the petitioner could have been appointed in the year 2014 as a Pharmacist on contract basis, it would imply that the petitioner was capable of doing the job of a Pharmacist. On the other hand, the stand now taken by the respondents is that the petitioner does not have the basic knowledge of a Pharmacist, as reflected in the impugned Order dated 30.10.2019.

18. Though this Court has held in the foregoing paragraphs that no relief for extension of the petitioner's engagement period can be given by this Court, as his contractual period ended on 31.03.2017, the reason given by the respondent authorities for not extending the petitioner's engagement period is only on the ground that the petitioner does not have the basic knowledge of a Pharmacist. Though this Court cannot substitute the views of the experts with its views, this Court is of the view that the respondent authorities should constitute a review committee, to decide the competence of the petitioner as a Pharmacist and take a decision as to whether the petitioner's contractual engagement can be extended on that score. It is needless to add that the respondents can also look into other factors/aspects of the matter in their discretion, while deciding whether or not to extend the petitioner's engagement. The entire exercise should be completed within a period of 1 (one) month from the date of receipt of a certified copy of this order.

19. Writ petition is accordingly disposed of.