
(2015) 05 JH CK 0071
In the Jharkhand High Court
Case No : WP(S) No. 6641 of 2013

Rahul	Vs	APPELLANT
The State of Jharkhand and Others		RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:

Citation : (2015) 3 JLJR 251

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Suraj Singh, for the Appellant; Sanjay Piprawall, Advocates for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J—Heard counsel for the parties. Petitioner was under contractual engagement pursuant to his appointment as Medical Officer by memo No. 1044 dated 18.6.2005 issued by the Chief Medical Officer at Primary Health Centre, Baliapur Dhanbad. It is not in dispute that petitioner's contractual engagement was not interrupted or came to a cessation either on the volition of the petitioner or at the instance of the employer. That is why the department included the name of the petitioner for consideration to the J.P.S.C. for regularization of services of such contractual Medical Officers based upon the conditions laid down in the Regularization Rules of 2011, Annexure-A notified on 12.8.2011. The name of the petitioner was also recommended by the respondent-J.P.S.C. as per Annexure-2 to the writ petition and also Annexures-B and D to the counter affidavit. It appears that for the district of Dhanbad petitioner's name was at serial No. 14 and in column 4 of the remarks, it was indicated that he is in continuous service. However, in bracket it is mentioned that as on making an application he was not present on the place of work from the period 1.10.2011 to 11.1.2012. Petitioner has, however, not been regularized in service despite such recommendation which is the reason for him to approach this Court seeking mandamus.

2. The case of the petitioner is being opposed by the respondent-State and J.P.S.C. on the ground that petitioner was in unauthorized absence for the said period which disentitles him for regularization in service in terms of Rule 4(Kha) of the 2011 Rules as also as per the conditions imposed at para 4 of the letter of Secretary, J.P.S.C. dated 6.5.2013, Annexure-B bearing No. 1239 addressed to the Principal Secretary of Health, Medical Education and Family Welfare Department, Ranchi. The said letter indicates that recommendation has been made in respect of candidates but the department is required to verify as to whether the conditions of 5 years of continuity in service laid down in the Rules is fulfilled by the recommended candidates. Apart from that, another condition is that the department should also enquire as to whether the candidate has remained in unauthorized absence in his service period or not.

3. Petitioner in reply has stated that he had proceeded on medical leave after giving application to the Chief Medical Officer, Dhanbad. He also states that by memo No. 4 dated 16.1.2012 issued by the Additional Chief Medical Officer, Dhanbad it has been communicated that again he has been posted at his original place as Medical Officer, Primary Health Centre, Baliapur, Dhanbad from the place of his deputation under the District Epidemic Force by the order of Chief Medical Officer dated 14.9.2011. According to the petitioner he joined at Primary Health Centre, Baliapur, Dhanbad on 19.1.2012. Therefore, not only are the conditions of 2011 Rules requiring continuity in service for 5 years fulfilled by him but there is no interruption in his service, as such his period of leave should not be treated as interruption in service for the purpose of regularization when his name has already been recommended by the J.P.S.C. accepting that he has made an application for going on leave for the said period.

4. Having considered the rival submission of the parties and taking into account the material facts as also provisions of 2011 Rules, it appears that for the purpose of regularization of service of a Medical Officer engaged on contractual basis, he was required to fulfill the eligibility criteria under Rule 4(kha) of being in continuous service of 5 years and had continued in service till the date of his regularization. It is not a case of the respondents that from the initial date of petitioner's contractual engagement in 2005, there has been any interruption in service or cessation of his service either on his own volition or on the instance of the respondent-Department. The petitioner states that he proceeded on Medical Leave with intimation to the Chief Medical Officer. Even though the respondent-department may or may not have sanctioned leave for the said period but there is no order to show that contractual engagement of the petitioner had been severed on account of such leave or absence for which he had proceeded. The rules on the other hand clearly stipulates that person concerned should have been in continuous contractual engagement of 5 years of service and have continued till the date of his regularization. As noticed hereinabove, there have been no cessation of service in the interregnum, therefore, it cannot be said that there was an interruption in his service or that there was no continuity in service. The reason for the respondents to refuse regularization of the petitioner is

perhaps on the basis of para 4 of the communication of the J.P.S.C. vide letter dated 6.5.2013, which is supported by the statement made at para 8 of the counter affidavit that petitioner has been reported to be absent from duty from 1.10.2011 to 10.1.2012. As has been observed hereinabove, there is no order to show that respondents had come to a conclusion that there is no continuity in the contractual engagement of the petitioner as required under Rule 4(kha). In the aforesaid state of facts and the reasons recorded hereinabove, the plea taken by the respondents for not regularizing the services of the petitioner even though he is found to have completed more than 5 years of contractual engagement and has been recommended as such by the J.P.S.C. also, does not seem to be justified in law as well as on facts. Petitioner is said to have continued in contractual engagement till December, 2014. The respondents are directed to regularize the services of the petitioner under the Health Department in terms of the recommendation of the J.P.S.C. made in his favour. The writ petition is allowed in the manner indicated hereinabove.