

(2018) 07 JH CK 0038

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2729 of 2017

Rajendra Mishra

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 19-07-2018

Acts Referred:

Health, Medical Education And Family Welfare Para-Medics Regular Appointment Rules, 2014 — Rule (iv)

Citation : (2018) 07 JH CK 0038

Hon'ble Judges : SHREE CHANDRASHEKHAR, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Abhishek Sinha, Atanu Banerjee, Satish Kumar

Final Decision : Allowed

Judgement

1. The petitioner, a regular appointee on the post of Pharmacist, has been terminated from service by order dated 17.04.2017 on the ground that he

does not fulfill the mandatory condition under Rule (iv) (Kha) of Health, Medical Education and Family Welfare Para-Medics Regular Appointment

Rules, 2014.Â Â

2.Â Mr. Anil Kumar Sinha, the learned Senior counsel for the petitioner has raised two fold contentions;Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â

(i) a regular appointee cannot be terminated from service without holding a regular departmental enquiry under the Conduct and Discipline Rules, and

(ii) an employee continues in service till the order of termination is issued or one is deemed to have been terminated from service. To fortify his

contentions the learned Senior counsel has referred to the decisions in â?? Ratnesh Kumar Choudhary vs. Indira Gandhi Institute of Medical Sciences,

Patna, Bihar & Ors.â? reported in AIR 2016 SC 467 and â??Kamal Nayan Mishra

vs. State of Madhya Pradesh & Ors reported in (2010) 2 SCC

169.

3. Stand taken by the respondents is that one of the essential qualifications for appointment as Pharmacist was that the applicant must have completed

5 years of contractual service and was in continuous service on the date of regular appointment. Mr. Atanu Banerjee, the learned GA submits that

in cases where it is found that an appointee does not fulfill the essential qualifications his service can be terminated by simply issuing a show-cause

notice. The learned Government Advocate further submits that the contract was extended only till 31.03.2015.

4. Briefly stated, the petitioner, who was initially appointed on 05.09.2005 on the post of Pharmacist on contractual basis, was appointed on regular

basis on 08.02.2016. This appointment was made pursuant to Advertisement dated 16.09.2015 for regular appointment of ANMs, Pharmacists and

Lab. Technicians. He tendered his joining on 15.02.2016. At this stage a show-cause notice was issued to him on 12.05.2016 on the allegation that he

has remained absent for more than one year before his regular appointment on the post of Pharmacist. This show-cause notice was replied by him

on 16.05.2016 and in the light of a report from the Civil Surgeon, Chaibasa received on 05.08.2016 he was issued another show-cause notice on

26.09.2016 why his appointment be not terminated. Holding that he does not fulfill the conditions under Rule (iv) (Kha), he has been terminated

from service.

5. Rule (iv) (Kha)

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gksAâ??

6. In the first place it needs to be recorded that in the counter-affidavit the respondents admit that appointment of the petitioner on 08.02.2016 was a

regular appointment and it is not that he has been regularized in service on the basis of his previous contractual appointment. On this stand of the

respondents it becomes apparent that petitioner's appointment on the post of Pharmacist is a fresh appointment on regular basis. In such

cases except where on admitted facts an applicant does not possess essential educational qualification one cannot be terminated from service without

holding a regular departmental enquiry. Termination of a regular appointee without holding a departmental enquiry can be justified only in exceptional

cases where no purpose would be served by holding a departmental enquiry. On the contention that an appointee can be terminated from service

simply by issuing a show-cause notice, it is pertinent to indicate here that such cases are those in which there is no dispute on facts and it is found that

the appointee does not fulfill the mandatory educational qualification.Â Â

7. In the present case, it is an admitted fact that petitioner's initial absence from duty from 05.01.2015 to 10.01.2015 was duly sanctioned and

thereafter for extension of leave he has submitted letters dated 02.02.2015, 05.05.2015, 14.09.2015 and 07.12.2015. On the aforesaid letters stand of

the respondents is that extension of leave was not sanctioned to the petitioner and period of absence from duty has not been regularized, but then

reasons disclosed by the respondents on this issue is patently wrong.Â The petitioner has taken a stand that on account of his own illness and illness

of his father, he could not attend his duty during the aforesaid period. Whether the period of absence from duty was willful and intentional or not has

not been decided by the employer.

Medical leave and other leave as provided under the Service Code can be granted subsequently also and a contractual employee can also be

admitted to leave. It is a well accepted proposition in law that subject to provisions under the Recruitment Rules which may provide automatic

termination of service, an employee continues in service till an order of termination is issued. Admittedly, petitioner's previous contractual

appointment was not terminated and, therefore, he shall be deemed to have continued in service on the date of his regular appointment. On extension

of his contractual employment it is pertinent to record that petitioner's initial leave was sanctioned during currency of the contract period and it

was not terminated is an admitted position.Â It is stated that in all other cases and in case of the petitioner also contract was automatically extended

and extension is generally done after few months.Â Moreover, his absence from duty could have been a ground for termination of his contractual

appointment, which admittedly was not done, but it cannot be a ground to terminate his fresh appointment. The petitioner fulfills all requisite

qualifications and he has completed about 20 years of service on contract as

Pharmacist. Termination of his service by simply issuing show-cause notice must be held illegal.

8. In the aforesaid facts, finding serious infirmity in the impugned order dated 17.04.2017, it is quashed.

9. The writ petition stands allowed.