

(2003) 09 AHC CK 0100

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 48859 of 2002

Santosh Kumar Gautam and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-09-2003

Acts Referred:

Citation : (2004) 1 UPLBEC 636

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Ashok Khare and N.S. Chahar, for the Appellant; P.P. Srivastava, M.D. Kulshreshtha, Madhav Jain, Caveator and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard the Counsel for the parties and perused the record.

2. The petitioners have filed the present writ petition, challenging the validity and Correctness of the order dated 29.10.2002 and 31.10.2002 passed by respondents No. 4 and 5, Annexures-3 and 6 to the writ petition, by which they have been directed to join in the parent department treating them as on deputation in AMA.

3. The brief facts of the case are that the petitioners were appointed on different dates on the posts of Attendants, Rajmistri, Cook, Game Ardali and Sweeper in the office of the Director, Mansik Arogyashala/Mental Hospital, Agra and claim that their services be deemed to be regularized in AMA, Agra.

4. Writ Petition No. 448 of 1994 was filed by one Aman Hingorani against Union of India and others, before the Hon"ble Supreme Court and the Hon"ble Supreme Court directed the Union Health Secretary to examine the matter and submit the report regarding Ranchi Mansik Arogyashala. The Apex Court has accepted the Dayal Report and declared that Agra Mental Hospital shall be an autonomous institution and its management shall be vested in a Management Committee constituted on 1.10.1994.

5. The Apex Court further held that all the workers, who were already working in the Mental Hospital, Agra will continue as without their co-operation, no improvement will be possible.

6. Para 9 of the Dayal Report, which has been accepted by the Apex Court, is being quoted below :--

"9. For the administrative set up of RMA, my considered views are given below :--

(a) The RMA should be an autonomous institution, managed by the Managing Committee, chaired by the Divisional Commissioner at Ranchi and have a Director in the Grade of Rs. 5900/-6700-(plus NPA and other allowances and free furnished accommodation) as its Chief Executive Officer.

(b) All the employees of RMA shall be Civil Servants of the Government of Bihar. The Director of RMA should be the Appointing and Disciplinary Authority for all B, C and D-Group Employees of RMA. The Managing Committee should be the Appointing the Disciplinary, Authority in respect of Group (A) Employees other than the Director of the RMA. The Health Department, in the State should be the Appointing and Disciplinary Authority for the Director of RMA."

7. Annexure-1 to the writ petition shows that the petitioners were appointed on permanent posts on temporary basis in AMA, Agra. Some of them were promoted also on temporary basis. They were treated as Superior Employees. In 1996 their Hospital was registered under Societies Registration Act. On 18.2.97, the State Government wrote a letter that the employees will be treated on deputation (Annexure-3 to the writ petition). Accordingly option was called from the employees on 1.3.97 calling their willingness to work on deputation. On 13.12.97 all the employees optioned for Government Service and refused to be on deputation. On 13.10.2001 option from employees was asked for absorption in AMA.

8. It is submitted by the petitioners that in Para 5 of the counter-affidavit, it has been stated by respondent No. 5, that the petitioners will be deemed to be on deputation, though there is nothing on record to indicate that they have been paid deputation allowance or gave consent for deputation and as such it cannot be said that the petitioners are on deputation. All the petitioners were initially working in Mental Hospital, Agra and after creation of Agra Mental Hospital, the petitioners became its employees and they cannot be sent on deputation to other departments without their consent. The posts of the petitioners had been sanctioned by the State Government and the same are still in existence. It is alleged that the petitioners are continuously attending the office of respondent No. 5, but neither they have been permitted to work in the office nor paid their salary since 30.10.2002. It is submitted that according to the judgment of the Apex Court as well as Dayal Report, they have become the employees of the Mental Hospital, Agra and cannot be sent to another department treating them as working on deputation.

9. The Counsel for the respondents contended that the petitioners were on deputation and were being repatriated to their parent department after terminating their deputation according to the Government D.O. dated 23.9.2002. They were relieved from Mansik Sawasthya Sansthan Evam Chikitsalaya, Agra and were directed to submit their joining report before respondent No. 4. The petitioners, who are Class IV Employees on deputation in AMA, have been adjusted in different Districts of Agra Region in compliance of the Government D.O. dated 23.9.2002.

10. According to the Dayal Report all the employees of the RMA shall be treated as Civil Servants of the Government of Bihar and similarly all the employees of the AMA shall be Civil Servants of U.P. Government. The petitioners clearly gave out in their option dated 13.11.97, that they want to remain in Government Service and do not want to work on deputation in AMA. There is no question of sending them on deputation from Agra. Deputation is well known conception service law. It has two essential ingredients (i) it is for a definite period and (ii) it is with consent of employee. Deputation can be repatriated by the defendants, where he is working and has no legal right to remain even after long years of service.

11. There is no material to show that the petitioners were sent to AMA with their consent or for any specific period of posting with unspecified period is transfer and not deputation.

12. Respondents No. 1 to 5, contended that in Writ Petition No. 339 of 1986, Rakesh Chandra Narayan v. State of Bihar and Ors., the Apex Court accepted the recommendations regarding RMA in Dayal Report. The Mental Hospital, Agra was a Hospital fully under the control of the Medical Health Department of the U.P. Government and that by the judgment dated 8.9.94, passed in Writ Petition No. 448 of 1994, Aman Hingorani v. Union of India and Ors., it was held that the Mental Hospital, Agra is converted into an autonomous body. The AMA vide letter dated 18.2.1997, addressed to the U.P. Government treated the persons posted in the AMA at the time to be deemed on deputation and consequently treated them to be on deputation. All such employees were required to indicate their options and by order dated 1.3.97, 18 petitioners declined to work in AMA, while other employees refused, clearly stating that they want to remain in Government Service and do not want to work in AMA on deputation. By another notice dated 13.10.2001, all such employees were asked to submit their willingness to be absorbed in AMA. The Government D.O. dated 14.4.2000, indicates that the matter of repatriation was pending with respondent No. 2, since 14.4.2000. On receipt of said Government letter signifying consent of the Government Department concerned to take back their employees including the present petitioners. Accordingly, all of them were relieved by separate order dated 29.10.2002. The Addl. Director issued order dated 31.10.2002, in compliance of the said Government letter dated 23.9.2002. All the petitioners were appointed when the Mental Hospital, Agra was under the control of the U.P. Government

except petitioner No. 20, who had been appointed on compassionate ground by the CMO, but the other petitioners, had not given their option to work on deputation in the AMA. The petitioners submits that it is not a case of transfer, but is a case of deputation.

13. The petitioners have concealed the fact that then of the petitioners have submitted separate joining report before respondent No. 4 before filing the writ petition, while petitioner Nos. 1, 2, 3 and 11 were already attached with the office of respondent No. 4. Their deputation was also terminated by respondent No. 5. In the meeting on 27.5.1999, it was decided that if some posts like that of Rajmistri, Cook, Waterman and Game orderly are vacant or available in the offices indicated by respondent No. 4 within Agra Region, they may be posted or transferred to those places, which may include the Mental Hospital at Bareilly and Varanasi and may be adjusted on equivalent posts carrying same scales of pay in other Government Primary Health Centers of U.P.

14. The Counsel for the respondents further contended that in the judgment of the Apex Court passed in Writ Petition No. 448 of 1994, relating to AMA, it was held that the Mental Hospital was not a Government Department and the petitioners could not be transferred elsewhere.

15. For want of special period in order of posting/appointment, the petitioners cannot be treated to be on deputation. They had not given their consent for going on deputation and were never paid deputation allowance.

16. In these circumstances, the writ petition is allowed and the impugned orders dated 29.10.2002 and 31.10.2002 are quashed as the same are misconceived and illegal. No order as to costs.