

(2021) 07 GAU CK 0049

In the Gauhati High Court

Case No : Interlocutory Application (Civil) No. 1106 Of 2021, Writ Petition (Civil) No. 2416 Of 2021

Shahid Hossain

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 13-07-2021

Acts Referred:

Citation : (2021) 07 GAU CK 0049

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : A Ahmed

Judgement

1. Heard Mr. A. Ahmed, learned counsel for the applicant.
2. Opposite party no. 1 is represented by Mr. K. K. Parasar, learned CGC appearing for the Union of India, Opposite party no. 2 is represented by Mr. S. S. Roy, learned Govt. Advocate appearing for the State and Opposite party nos. 3, 4, 5 & 6 are represented by Mr. A. Chaliha, learned standing counsel for the Health as well as the Finance Department. They have also been heard.
3. Let a formal notice be issued on the opposite party nos. 1 to 6 returnable on 30.07.2021.
4. As all the opposite parties are represented, requisite additional copies of the application be furnished to the respective counsel for the respondents within two days.
5. This is an application for modification of order dated 30.03.2021 passed by this Court in WP(C) 2416/2021.
6. By referring to the order under file no. NAM/Manpower/2020/247/110 dated

23.03.2021 (Annexure 15 to the writ petition), it is submitted that contents thereof is as follows:

Subject: Termination of Service

Whereas, the contract period of your service as Office Peon, in SPMU under National AYUSH Mission, Assam will expire on 31st March

2021;

Whereas, except of the position of the Programme Manager, Consult (NAM), HMIS Manager and Finance Manager, there is no provision

for the position of Office Peon in the state level SPMU under National AYUSH Mission as per the revised guidelines vide no.

Z.28015/20/2018-H&D cell dated 04/05/2020 issued by Ministry of AYUSH, Govt. of India.

Whereas the availability of fund under the component of Human Resource does not permit for payment to the staffs beyond the approved

positions of Programme Manager, Consultant (NAM), HMIS Manager and Finance Manager in SPMU under NAM, Assam.

Whereas, the term and condition under clause 5 of the agreement signed with you stipulates that the service of the first party shall stand

automatically terminated at the expiry of contract period without any notice pay and without any liability on part of the society to pay any

retrenchment or other compensation or other amounts to the party.

In view of the above, the contractual engagement in the position of Office Peon, in respect of you could not be further extended beyond the

31st March 2021 and hence your tenure of contractual engagement will end on 31st March 2021.

Yours faithfully,

Directorate of AYUSH & Member Secretary (EB)

State Ayush Society, Assam

7. The learned counsel for the applicant has also referred to Annexure III of this interlocutory application which is an order under file no.

AYUSH/3/2014 dated 23.03.2021, the contents thereof as follows:

Office Order

For smooth functioning of o/o the State Programme Management Unit, National AYUSH Mission, Assam, Sri Biren Malakar and Manzur

Hazarika, Peon cum Chowkidar o/o the Directorate of AYUSH, Assam are hereby detailed for duties at o/o the SPMU, NAM, Assam in same

the capacity. This order will come into force immediate effect until further orders.

Directorate of AYUSH, Assam

Dispur, Guwahati-6â??

8. Accordingly, it is submitted that while terminating service of the applicant, the opposite party no. 3 took a stand that there is no post of Office Peon

in the State level SPMU under the National AYUSH Mission, whereas by another order of the same date, the same opposite party no. 3 has

appointed two persons as Peon-cum-Chowkidar in the Directorate of AYUSH. Accordingly, it is submitted that the petitioner who is an Ad-hoc

employee has been replaced by another two ad-hoc employees.

9. Opposing this application, the learned standing counsel for the Health & Finance Department has submitted that the contractual service of the

applicant had expired and therefore, the service was terminated and therefore, the applicant has no right to have continued appointment after lapse of

contractual period. It is submitted that the order of appointment of two Peon-cum-Chowkidar was made for the smooth functioning of the State

Programme Management Unit of National AYUSH Mission and accordingly justifies order of termination as well as appointment of two peon-cum-

chowkidar.

10. It would be appropriate to note here the operative portion of the order dated 30.03.2021 which is quoted below:

â??The learned counsel for the petitioner has prayed for interim protection by staying the operation of the impugned order dated

23.03.2021 with a direction to the respondent to allow the petitioner to continue in the service. In this connection, the learned standing

counsel for the Health Department has submitted that the appointment of the petitioner was purely on temporary basis and as per the

contract of service, the contract would become terminable on 31.03.2021. He further submits that the post of peon is not contemplated in the

guidelines.

On a query by the Court, the learned standing counsel for the Health Department has submitted that this is not a case where the respondent

authorities are contemplating to remove the petitioner and to appoint another person as peon on a contractual service.

Therefore, as the contract of service of the petitioner would come to an end on 31.03.2021, and from the prayer made to include post of

peon in the revised guidelines, this Court is not inclined to pass any interim order so as to extend the period of contract beyond the

contractual period ending 31.03.2021 and to grant a final relief in guise of an interim order and, as such, the prayer for interim relief as

made in this petition is not considered at this stage. However, the Court is inclined to provide that by terminating the service of the

petitioner, the respondents shall not appoint any other person as peon on contractual and/ or ad hoc basis till further order of this Court.

It is further provided that the pendency of this writ petition shall not be a bar for the respondents in the Health Department to consider re-

engagement of the petitioner, if so desired. Accordingly, the petitioner is at liberty to produce the certified copy of the order before the

respondent no.3.â??

11. Accordingly, having noticed that the opposite party no. 3, after terminating the service of the applicant on the same day has appointed two other

persons as Peon-cum Chowkidar, this Court is of the considered opinion that this is an appropriate and a fit case for staying the operation of the

impugned order No. NAM/Manpower/2020/247/110 dated 23.03.2021.

12. In order to make this order effectual, the Court permits the applicant to produce a downloaded copy of this order before the opposite party no. 3,

i.e. Director of AYUSH & Member Secretary (ED), State AYUSH Society Assam and the opposite party no. 3 shall be at liberty to verify the order

from the website of this Court and act accordingly, within a period of seven days from the date of receipt of downloaded copy of this order.

13. Having regard to the nature of grievance raised in this interlocutory application, the same shall be kept tagged with connected writ petition.

14. List this interlocutory application along with the connected writ petition on 30.07.2021.