

Manu Kumar Vs. The Union of India and Ors

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Court : Jharkhand

Decided On : May-05-2017

Appellant : Manu Kumar

Respondent : The Union of India and Ors

Judgement :

1. IN THE HIGH COURT OF JHARKHAND, RANCHI W.P.(S) No. 964 of 2017 --- Md. Reyaj Ansari, s/o Mr. Abdul Gaffar, resident of Bank Mohalla, Piska Nagari, P.O. Nagri, Dist. Ranchi, P.S.Nagri, District-Ranchi Petitioner --Versus-- 1.The Union of India, 2.Director, Central Government Health Scheme, Nirman Bhawan, New Delhi, P.S.-Cannaught Place, P.O.-Nirman Bhawan 3.Additional Director, cum Director General, Central Government Health Scheme, Headquarter, Nirman Bhawan, New Delhi, P.S.-Cannought Place, P.O.-Nirman Bhawan 4.Additional Director, Central Government Health Scheme, New A.G. Colony, Doranda, Ranchi, P.O.-Doranda, P.S.-Doranda 5.The Director, Zee Alert Securities and Intelligence Services, Registered Office:201 Malabar Enclave, Bariatu, Ranchi, P.O.-Bariatu, P.S.-Bariatu 6.Bhushan Prasad, Pharmacist, CGHS, Wellness Centre-III, P&T Colony, Lalpur, Ranchi-834001 7.Meghdoot Minz, Pharmacist, CGHS, Wellness Centre-II, Deep Villa 10-A, Purulia Road, Kanta Toli,Ranchi-834001 . Respondents with W.P.(S) No. 5653 of 2016 --- Manu Kumar, s/o Mr. Ravindra Ram, resident :56 Set, Kumhar Toli, P.O.&P.S.:Doranda, District:Ranchi Petitioner --Versus-- 1.The Union of India 2.Director, Central Government Health Scheme, Nirman Bhawan, P.O.-G.P.O., P.S. Sansad Marg, New Delhi

3. Additional Director, cum Director General Central Government Health Scheme, Headquarter, Nirman Bhawan, P.O.: -GPO & P.S.-Sansad Marg, New Delhi

4. Additional Director, Central Government Health Scheme, New A.G. Colony, Doranda, P.O. & P.S.-Doranda, District-Ranchi . Respondents with W.P.(S) No. 5655 of 2016 --- Ms. Jyoti Kumari, w/o Mr. Suresh Mahto, resident of village-Sarai Toli, P.O.:Mahilong, P.S.-Tatisilway, District-Ranchi Petitioner --Versus-- 1.The Union of India 2.Director, Central Government Health Scheme, Nirman Bhawan P.O.-GPO & P.S.:Sansad Marg, New Delhi 3.Additional Director, cum Director General Central Government Health Scheme, Headquarter, Nirman Bhawan, P.O.-GPO & P.S.:Sansad Marg, New Delhi 4.Additional Director, Central Government Health Scheme, New A.G. Colony, P.O.+P.S.-Doranda, Dist.-Ranchi . Respondents with 2. W.P.(S) No. 5656 of 2016 --- Md. Reyaj Ansari, s/o Mr. Abdul Gaffar, resident of Bank Mohalla, Piska Nagari, P.O. Nagri, P.S. Nagri, District-Ranchi Petitioner --Versus-- 1.The Union of India 2.Director, Central Government Health Scheme, Nirman Bhawan, P.O.-GPO, P.S.-Sansad Marg, New Delhi 3.Additional Director, cum Director General, Central Government Health Scheme, Headquarter, Nirman Bhawan, P.O.-GPO & P.S.-Sansad Marg, New Delhi 4.Additional Director, Central Government Health Scheme, New A.G. Colony, P.O.+P.S. -Doranda, Dist.-Ranchi . Respondents with W.P.(S) No. 998 of 2017 --- Ms. Jyoti Kumari, w/o Mr. Suresh Mahto, resident of village-Sarai Toli, P.O.-Mahilong, P.S.-Tatisilway, District-Ranchi Petitioner --Versus-- 1.The Union of India 2.Director, Central Government Health Scheme, Nirman Bhawan, New Delhi, P.O.-Nirman Bhawan, P.S.-Cannought Place 3.Additional Director, cum Director General Central Government Health Scheme, Headquarter, Nirman Bhawan, New Delhi, P.O.-Nirman Bhawan, P.S.-Cannought Place 4.Additional Director, Central Government Health Scheme, New A.G. Colony, Doranda, P.O.-Doranda, P.S.-Doranda, Ranchi 5.The Director, Zee Alert Securities and Intelligence Services, Registered Office-201 Malabar Enclave, Bariatu, P.O.& P.S.-Bariatu, Ranchi 6.Draupadi Tirkey, Staff Nurse, CGHS, Wellness Centre-II, Deep Villa 10-A, Purulia Road, Ranchi-834001, P.O.& P.S.-Sadar, Ranchi . Respondents with W.P.(S) No. 999 of 2016 --- Manu Kumar, s/o Mr. Ravindra Ram, resident-56 Set, Kumhar Toli, P.O.& P.S.-Doranda, District-Ranchi Petitioner --Versus-- 1.The Union of India 2.Director, Central Government Health

Scheme, Nirman Bhawan, New Delhi, P.O.-Nirman Bhawan, P.S.-Connaught Place 3.Additional Director, cum Director General Central Government Health Scheme, Headquarter, Nirman Bhawan, New Delhi, P.O.-Nirman Bhawan, P.S.-Cannought Place 4.Additional Director, Central Government Health Scheme, New A.G. Colony, Doranda, P.O.& P.S.-Doranda, Ranchi 5.The Director, Zee Alert Securities and Intelligence Services, Registered Office-201, Malabar Enclave, Bariatu, P.O.& P.S.-Bariatu, Ranchi 6.Bhushan Prasad, Pharmacist, CGHS, Wellness Centre-III, P&T Colony, Lalpur, P.O.-GPO, P.S.-Lalpur, Ranchi-834001 7.Meghdoot Minz, Pharmacist, CGHS, Wellness Centre-II, Deep Villa, 10-A, Purulia Road, P.O.-GPO, P.S.-Sadar, Ranchi-834001. . Respondents --- 3. CORAM : HONBLE MR. JUSTICE SHREE CHANDRASHEKHAR --- For the Petitioner(s) : Mr. Samir Verma, Advocate For the Union of India : Mr. Bharat Bhushan Pd.Sahu,C.G.C. [WP(S)Nos.5656 of 2016 & 964 of 2017] Mr.Devanand Kumar, C.G.C [WP(S)Nos.5653 of 2016, 999 of 2017 Mrs. A.R.Choudhary, Advocate Ms. Amrita Sinha, Advocate [WP(S) Nos.5655 of 2016 & 998 of 2017] For Resp.no.6 : Mr. Laldhani Ram, Advocate [WP(S)Nos.964 of 2017 & 999 of 2017] For Resp.no.5 : Mr. K.K.Singh, Advocate [WP(S)Nos.964/17, 998/17 & 999/17] --- 6/ 05.05.2017 The affidavits are taken on record.

2. In this batch of writ-petitions, the petitioners have challenged their termination and subsequent engagement of private-respondents in their place. Another prayer is for grant of age-relaxation for enabling them to participate in the recruitment exercise pursuant to employment notice published in September, 2016.

3. The Petitioners namely, Md. Reyaj Ansari and Manu Kumar were appointed on the post of Pharmacist in Wellness Centre-II, Ranchi and the petitioner namely, Ms. Jyoti Kumari was engaged as Staff Nurse.

4. Briefly stated, on the basis of an agreement between CGHS and Hindustan Latex Limited (HLL), 'TeamLease' was assigned as a service provider. Petitioners namely, Md. Reyaj Ansari and Ms. Jyoti Kumari were appointed on 15.06.2005. Both the petitioners were engaged directly by HLL whereas, the petitioner namely, Manu Kumar was engaged on 02.02.2011. Subsequently, they were continued in service by another service provider-Zee Alert Securities and Intelligence Services.

The petitioners continued to serve till 19.11.2016, when in the garb of expiry of contract between CGHS and Zee Alert Securities and Intelligence Services, they were not continued by CGHS. In the counter-affidavit, the respondent-Union of India has taken a stand that the contract between HLL and CGHS-HQ does not confer a right on the appointees for their absorption in service. It is pleaded that CGHS Wellness Centre-II was previously running under Plan-expenditure, which consequent upon a decision dated 31.12.2015 has been transferred to Non-Plan expenditure category. A direction was received for filling up the posts and consequently an advertisement was issued in September, 2016 for regular appointment. A relationship of employer-employee has been denied by the respondent-CGHS. In the above facts, prayers in the writ-petitions have been resisted by the respondent-Union of India.

5. An examination of the materials produced on record would, however, disclose that the notice inviting applications for appointment has been issued by the respondent-Union of India under the signature of Additional Director/CGHS/Ranchi. The plea taken by the respondent-Union of India that there is no employer-employee relationship between CGHS and the petitioners is not supported by the documents produced in the present proceeding. In fact, the affidavit filed on behalf of Zee Alert Securities and Intelligence Service contradicts the stand taken by the respondent-Union of India in its counter-affidavit. It is now a matter of record that period of contract for M/s Zee Alert Securities and Intelligence Service was extended till 19.07.2017. Previously, it was given a contract for supply of man-power such as, Pharmacists, Staff Nurse, LDC, Dresser, Female Attendant, Choukidar, MTS, Peon, Nursing Male Attendant, Safaiwala etc. under agreement dated 11.03.2015, however, under the subsequent agreement it has been asked to provide LDC and MTS only. The agencies, HLL and Zee Alert Securities and Intelligence Services were engaged primarily for man-power supply. The posts of Pharmacist and Staff Nurse of Wellness Centre-II at, Ranchi are under the respondent-CGHS.

6. After disengagement of the petitioners, Bhushan Prasad, 5. Meghdoot Minz and Draupadi Tirkey were engaged by the Additional Director/CGHS/Ranchi purportedly in the light of instructions under letter dated 28.04.2016. No reason

has been disclosed by the respondent-Union of India why the petitioners were not continued on the posts on which two of them were working for last 10 years and the petitioner namely, Manu Kumar for more than 5 years. Neither the affidavit filed on behalf of the retired Pharmacist namely, Bhushan Prasad nor the affidavit of UOI would reveal how subsequent engagement of other persons in place of the petitioners has been made. Admittedly, no notice for engagement in place of petitioners has been issued. Evidently, the petitioners have not been continued by the respondent-Union of India in breach of the rule of fair-play in action. It appears that the aforesaid steps have been taken at the local level by the Additional Director/CGHS/Ranchi. When the petitioners came to this Court seeking stay of the process for recruitment and, in the alternative, age-relaxation, they were terminated from service.

7. The learned counsel for the petitioners has referred to a decision of Punjab & Haryana High Court in Harish Chand & Ors vs Additional Director, CGHS & Ors in CWJC No.4196 of 2014, to contend that the petitioners are entitled for a similar relief of regularisation under CGHS. It is admitted at Bar that the petitioners were permitted to appear in the written examination. In the counter-affidavit, there is no opposition to prayer for grant of age-relaxation. The petitioners who have continued to serve CGHS Wellness Centre-II at Ranchi decidedly deserve preference in appointment, if not regularization. They shall be accorded age relaxation to the extent they served at CGHS Wellness Centre-II at Ranchi and they shall be accorded preference in appointment, in the event another candidate secures marks similar to the marks obtained by the petitioners. However, I am not inclined to disturb the ad hoc arrangement made at the local level by engaging other Pharmacists and Staff Nurse. The respondents shall conclude the process of appointment within next two months.

8. With the above directions, the writ-petitions stand disposed of.

9. Consequently, the I.A. No.6896 of 2016 filed in W.P.(S) No.5655 of 2016 and I.A. No.6894 of 2016 filed in W.P.(S) No.5656 of 2016 for stay of the notification published in the Employment News for the recruitment stand disposed of. (Shree Chandrashekhar, J.) SI/,

