

Ashok Godara Vs. State and ors

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Court : Rajasthan Jodhpur

Decided On : May-22-2014

Appellant : Ashok Godara

Respondent : State and ors

Advocate for Pet/Ap. : Mr. R.S.Saluja

Judgement :

SBCWP No.3503/14-Ashok Godara vs. State & Ors. SBCWP No.3502/14-Dharmendra Bharti & Ors. vs. State & ors. (along with other 10 connected matters)
Judgment dt:22/5/2014 1/14 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Ashok Godara vs. State & ors. S.B.CIVIL WRIT PETITION No.3503/2014
Dharmendra Bharti & Ors. vs. State & ors. S.B.CIVIL WRIT PETITION No.3502/2014 (along with other 10 other connected matters - See Schedule)
DATE OF

JUDGMENT

:

22. d MAY, 2014 PRESENT HON'BLE DR.JUSTICE VINEET KOTHARI Mr. R.S.Saluja,]. Mr. Bharat Devasi,]. Mr. R.S.Choudhary,]. Mr. Shreekant Verma,]. for the petitioners. Mr. T.S.Rathore,]. Mr. R.J.Punia,]. Mr. Parikshit Nayak,].

Dr.Pushpendra Bhati, Addl. Advocate General with Mr. Sajjan Singh Rathore, for the State. REPORTABLE BY THE COURT:

1. The contractual employees; Pharmacists, Computer Operators and Helpers working in the Primary Health Centres and Drug Distribution Centres (DDC) under the Chief Minister's Free Medical Aid Scheme are again before this Court in the present batch of writ petitions. Ever under the threat of their contractual period not being SBCWP No.3503/14-Ashok Godara vs. State & Ors. SBCWP No.3502/14-Dharmendra Bharti & Ors. vs. State & ors. (along with other 10 connected matters) Judgment dt:22/5/2014 2/14 extended which is being extended year to year so far for last 3-4 years and they be again rendered unemployed is the result of respondent State taking only tentative decisions of temporary employment of such persons under the various schemes, which employment does not have any guarantee of continued employment and in the absence of any security of employment, these employees always work under the constant threat of being thrown out of their respective jobs and in the background of that anxiety and threat, they seek the protection of the Court again and again and that is what the new phenomenon of service jurisprudence dealt with by the Courts in the present era is ! 2. The present petitioners are before this Court again on account of their contractual employment not being continued after 30/4/2014 and inter alia contended that since the Chief Minister's Free Medical Aid Scheme has been continued by the new Government which assumed office after the Legislative Assembly Elections in the year 2013, therefore, the requirement of Pharmacists, Computer Operators and Helpers in the Drug Distribution Centres (DDCs) still continues and unless & until the regularly selected and appointed persons against the sanctioned & determined vacancies are made available to man these DDCs, there is no justification in not extending the contractual employment period of these petitioners and they deserve to be continued in such positions. SBCWP No.3503/14-Ashok Godara vs. State & Ors. SBCWP No.3502/14- Dharmendra Bharti & Ors. vs. State & ors. (along with other 10 connected matters) Judgment dt:22/5/2014 3/14 3. Learned counsels for the petitioners led by Mr. R.S.Saluja in Civil Writ Petition No.3503/2014 - Ashok Godara vs. State & ors. & Civil Writ Petition No.3502/2014 - Dharmendra Bharti & Ors. vs. State & Ors. contended that the petitioner - Ashok Godara was appointed as Pharmacist by the respondent

Jodhpur Sahkari Upbhokta Wholesale Bhandar Limited on 30/9/2011 vide Annex.7 and his contractual term was extended from time to time and the earlier writ petition filed by petitioner Ashok Godara, namely SBCWP No.8849/2011 - Ashok Godara vs. State & ors. was disposed of on 7/11/2013 by this Court holding that since the petitioner Ashok Godara had participated in the regular selection process of Pharmacists in pursuance of the Advertisement dated 30/12/2011 inviting applications for 1487 posts of Pharmacists and having failed in the same, therefore, the writ petition filed by him was rendered infructuous and same was dismissed as such on 7/11/2013. However, the petitioner was continued on contractual basis even thereafter. The Director of Medical & Health Department, Jaipur, however, vide communication dated 25/4/2014 (Annex.12) addressed to all the Chief Medical & Health Officers of the State has directed that the Pharmacists, Computer Operators (Machine along with trained personnel) and Helpers employed through Rajasthan Medical Relief Society (RMRS) for the Chief Minister's Free Medical Aid Scheme for 2013-14, their term was finally extended only upto 31/1/2014/February, 2014 respectively and further extension of period was under consideration by the State Government and no SBCWP No.3503/14- Ashok Godara vs. State & Ors. SBCWP No.3502/14- Dharmendra Bharti & Ors. vs. State & ors. (along with other 10 connected matters) Judgment dt:22/5/2014 4/14 extension had yet been received upto the date of the communication dated 25/4/2014 and in pursuance of such communication of the Director, Medical & Health Department, the respondent CMHO directed the concerned different Incharge of the DDCs to immediately terminate the contract of services of petitioners upto 30/4/2014 otherwise for payment of wages and salary for the month of May, 2014, such persons would be personally responsible. Consequently, the Incharge of the Primary Health Centre, Banar terminated the contractual employment w.e.f. 30/4/2014 vide order dated 1/5/2014 (Annex.15) and being aggrieved of the same, the petitioner has approached this Court by way of present writ petition.

4. Mr. R.S.Saluja, learned counsel for the petitioners contended that from the reply filed on behalf of the respondent State in the present case, no final consideration on the part of the State has taken place yet as far as the Pharmacists are concerned, which was communicated in communication Annex.12 dated

25/4/2014 of the Director, Medical & Health Department, Jaipur and the letter produced by the respondent State as Annex.R/1 dated 16/5/2014 only indicates that the contractual term of only those Pharmacists employed through RMRS numbering 423, their contractual period has been extended, as only 423 posts have been sanctioned until the regular selection process is held & such regularly selected Pharmacists become available but as far as Helpers and Computer Operators are concerned, no such final decision has been taken yet SBCWP No.3503/14-Ashok Godara vs. State & Ors. SBCWP No.3502/14- Dharmendra Bharti & Ors. vs. State & ors. (along with other 10 connected matters) Judgment dt:22/5/2014 5/14 and since the communication dated 25/4/2014 does not direct the lower authorities, namely; CMHOs or the incharge of DDCs to terminate the contractual employment of the petitioners but only stipulated that further sanction for extension of period has not been received from the State yet, therefore, the respondents cannot terminate the contractual employment of the petitioners till the regularly selected persons for these posts are available and appointed.

5. Learned counsel for the petitioners also contended that the requirement of these persons in various DDCs still continues and, therefore, there is no justification for discharging their contractual employment merely because the financial sanction from the State was not yet received and Mr. Saluja also submitted that Annex.15 dated 1/5/2014 passed by the local incharge of the DDC indicated that the alternative arrangement for the work done by the petitioner post has been made by handing over the charge to one Smt. Anita Danial, Staff Nurse II, which was not even in accordance with the provisions of the Indian Pharmacists Act, which mandatorily requires appointment of one Pharmacist at such DDCs as per Section 42 of the said Act.

6. Other learned counsels appearing for the petitioners, while adopting the arguments of Mr. R.S.Saluja, have similarly contended that the lack of financial sanction and approval for these posts SBCWP No.3503/14-Ashok Godara vs. State & Ors. SBCWP No.3502/14- Dharmendra Bharti & Ors. vs. State & ors. (along with other 10 connected matters) Judgment dt:22/5/2014 6/14 cannot be a good ground for not continuing the term of contract for the persons like Helpers, who help the pharmacists in the distribution of drugs at DDCs under the Chief

Minister's Free Medical Aid Scheme, which Scheme is undoubtedly continuing even now and, therefore, the petitioner contractual employment deserve to be protected by the Court.

7. On the other hand, Mr. Pushpendra Bhati, learned Addl. Advocate General appearing for the respondent State vehemently opposed these writ petitions and supported the decision taken by the respondent State placed on record as Annex.R/1 dated 16/5/2014 and contended that the decision in this regard has been taken by the State that the contractual period of the Pharmacists employed through RMRS only will be extended till the regular selection process for the 423 posts of Pharmacists is held by the State Government and for the other Pharmacists employed through other agencies other than RMRS are concerned, the State Government has not extended the financial sanction and those persons do not have any right to seek mandamus direction from this Court under Article 226 of the Constitution of India for continuance of their contractual employment. Drawing the attention of the Court towards all the three categories of employees in this batch of writ petitions, learned Addl. Advocate General, Mr. Pushpendra Singh Bhati submitted that the final decision for Computer Operators and Helpers has also been taken and while the 'Information Assistants' in place of 'Computer SBCWP No.3503/14-Ashok Godara vs. State & Ors. SBCWP No.3502/14-Dharmendra Bharti & Ors. vs. State & ors. (along with other 10 connected matters) Judgment dt:22/5/2014 7/14 Operators' have been regularly selected in the selection process of 2013, which process is over by now for the 600 posts of Helpers, which were sanctioned in 2011 and extended upto 30/4/2014, since no financial sanction & approval has been granted by the State, therefore, the their contractual employment cannot be continued.

8. Explaining the position of Pharmacists, learned Addl. Advocate General Mr. Pushpendra Bhati justified the continuance of contractual period of only those Pharmacists, who were initially employed through the RMRS on contractual basis, he submitted that since the State Government has complete control over the RMRS, the State Government in its discretion could restrict the continuance of contractual employment of only those persons, who are employed through RMRS & not through other placement agencies like Jodhpur Upbhokta Wholesale

Bhandar Ltd. etc.

9. The stand taken by the respondent State in para 15 and 16 of the reply to the writ petition of Ashok Godara (supra) is quoted below for ready reference:-

15. That the contents of para No.15 of the writ petition are admitted to the extent of Annex.9 of the instant writ petition however, it is submitted that the respondent No.1 issued communication dated 16.5.2014 to all the Chief Medical & Health Officer and informed them the approval with regard to extension of the services of the 423 contractual Pharmacist SBCWP No.3503/14-Ashok Godara vs. State & Ors. SBCWP No.3502/14- Dharmendra Bharti & Ors. vs. State & ors. (along with other 10 connected matters) Judgment dt:22/5/2014 8/14 has been received. That the respondent no.1 directed all the CMHOs to extend the term of the contractual Pharmacist who are working against the sanctioned post and are appointed through Rajasthan Medicare Relief Society. Copy of the communication dated 16.5.2014 is annexed herewith and marked as Annexure R/1. That as far the post of Computer Operator is concerned the State government made regular recruitment to the post of Information Assistant in the year 2013. That those selected regular Information Assistants were posted in the manner that, at Community Health Center 2 Information Assistants were posted, at Primary Health Center 1 Information Assistant is posted and at Government Dispensary 1 Information Assistant is posted. Since regular Information Assistants are posted in place of Computer Assistant therefore the services of petitioner being contractual in nature has been terminated. That as far the post of Helper is concerned it is submitted that the post of Helper was approved by the state Govt. in the year 2011 for the purpose of helping the Pharmacist under the Scheme. That 600 posts of Helper were approved and Financial sanction for the same was also issued. That the appointment of the Helpers was made by the Rajasthan Medicare Relief Society on fix term on contractual basis. That the extension of term of Helpers was upto 2014 and thereafter the financial sanction and approval for the post of Helpers is not granted. That in the event of non extension of the post of Helpers, the Helpers working cannot claim continuation as the post of SBCWP No.3503/14-Ashok Godara vs. State & Ors. SBCWP No.3502/14- Dharmendra Bharti & Ors. vs. State & ors. (along with other 10 connected matters) Judgment dt:22/5/2014

9/14 Helper is not a sanctioned post under any Rules.

16. That the contents of para No.16 of the writ petition are admitted to the extent of letter dated 29.4.2014 however, it is submitted that since the services of 423 contractual Pharmacist has been extended till regularly selected candidates are made available and particularly who are appointed through Rajasthan Medicare Relief Society. That if the petitioner is fulfilling the aforesaid condition that he is appointed by the said society and on the sanctioned post then his services will be continued and if not then the petitioner has no right to continue. And for the post of Computer Operator the state government made regular recruitment to the post of Information Assistant in the year 2013. That those selected regular Information Assistants were posted in the manner that, at Community Health Center 2 Information Assistants were posted, at Primary Health Center 1 Information Assistant is posted and at Government Dispensary 1 Information Assistant is posted. Since regular Information Assistants are posted in place of Computer Assistant therefore the services of petitioner being contractual in nature has been terminated. That in the event of non extension of the post of Helpers, the Helpers working cannot claim continuation as the post of Helper is not a sanctioned post under any Rules.. 10. I have heard the learned counsels at length and perused the record. SBCWP No.3503/14-Ashok Godara vs. State & Ors. SBCWP No.3502/14-Dharmendra Bharti & Ors. vs. State & ors. (along with other 10 connected matters) Judgment dt:22/5/2014 10/14 11. As far as the question of giving mandamus direction to the State to continue the petitioners in contractual employment beyond 30/4/2014 is concerned, this Court is of the considered opinion that such a mandamus direction cannot be given. It is within the domain and discretion of the State Government to extend the contractual term upto the period, which they think proper looking to their requirements, availability of posts, availability of financial sanction & approval from the State Govt. under Free Medical Aid Scheme by the Central Government for NRHM under which the said projects are continuing. There is no material placed on record by the petitioners that without the employment of petitioner on contractual basis, the State Government would not be able to run these DDCs under the Chief Minister's Free Medical Aid Scheme, which undoubtedly is continuing even after the change of Government after Legislative Assembly Elections in 2013. The administrative structure required for

manning such DDCs is within the control of the State & the State has already held regular selection process for Pharmacists & the Information Assistants in recent past. It may do so even now for remaining posts as sanctioned by the State.

12. It is true that after continuing for 3-4 years, the discharge of contract of employment causes dislocation and renders the persons like the petitioners unemployed and certainly causes financial loss and prejudices to them but this Court finds no legal foundation and basis for directing the State to continue the petitioners on contractual SBCWP No.3503/14-Ashok Godara vs. State & Ors. SBCWP No.3502/14- Dharmendra Bharti & Ors. vs. State & ors. (along with other 10 connected matters) Judgment dt:22/5/2014 11/14 employment beyond the date of expiry of the contract itself. The State in the present case is not seeking to replace one set of contractual employees by another set of contractual employees, which as an unfair practice could be injuncted against by this Court. Here the State has decided to simply continue only those Pharmacists employed through RMRS that too against 423 posts vide order Annex.R/1 dated 16/5/2014 till the regular selection process for such posts of Pharmacists is held by the State. From the reply of the State Government, quoted above, it is clear that the final decision has been taken by the respondent State in this regard. The justification for restricting the continuance of Pharmacists employed only through RMRS also cannot be said to be unreasonable & hit by any invidious classification so as to be violative of Article 14 of the Constitution of India. The petitioner Ashok Godara, who was employed through other placement agency, of course with the authority of the State at the time of recruitment given to Jodhpur Upbhokta Wholesale Bhandar Ltd. but he , cannot claim that extension of contractual employment to the persons employed through RMRS creates any unreasonable classification, which is hit by Article 14 of the Constitution of India. It appears to be a reasonable classification and that too under a temporary arrangement made by the State till the respondent State holds the regular selection process for these 423 posts of Pharmacists as per the communication Annex.R/1 dated 16/5/2014. SBCWP No.3503/14-Ashok Godara vs. State & Ors. SBCWP No.3502/14- Dharmendra Bharti & Ors. vs. State & ors. (along with other 10 connected matters) Judgment dt:22/5/2014 12/14 13. The contention of the learned counsels for the petitioner that for the post of Helpers, no decision has been taken by the State Government is also belied by

the reply filed by the respondent State that the extension of term of Helpers was upto April, 2014 and, thereafter, the financial approval and sanction for the post of Helper is not granted.. This averment made in reply by the State Government has not been controverted and there is no document to the contrary placed on record, therefore, the Court cannot presume that no decision was taken by the State with regard to the post of Helpers.

14. As far as Computer Operators are concerned, there is no dispute that with a different name and designation known as Information Assistants. the regular selection process has already been held by the State Government in the year 2013 and since the regularly selected persons or Information Assistants became available for the post of Computer Operators, some of the present petitioners, who are Computer Operators, cannot claim any preferential right over the regularly selected and appointed Computer Operators/Information Assistants.

15. This Court is, therefore, of the considered opinion that present set of writ petitions do not have any merit & deserve to be dismissed and no mandamus direction can be given to the respondent State to extend the term of contractual employment of the Pharmacists SBCWP No.3503/14-Ashok Godara vs. State & Ors. SBCWP No.3502/14- Dharmendra Bharti & Ors. vs. State & ors. (along with other 10 connected matters) Judgment dt:22/5/2014 13/14 employed through agencies other than RMRS, Computer Operators and Helpers working in the various DDCs, run and operated by the State Government under the Chief Minister's Free Medical Aid Scheme.

16. Consequently, the writ petitions are hereby dismissed. No costs. Copy of the order be sent to the concerned parties forthwith. (DR.VINEET KOTHARI), J baweja/- SBCWP No.3503/14-Ashok Godara vs. State & Ors. SBCWP No.3502/14- Dharmendra Bharti & Ors. vs. State & ors. (along with other 10 connected matters) Judgment dt:22/5/2014 14/14 SCHEDULE1 SB Civil Writ petition No.3398/2014 - Lalit Kumar Bhati and ors. V/s State and ors.

2. SB Civil Writ petition No.820/2014 - Deva Ram and ors. V/s State and ors.

3. SB Civil Writ petition No.3486/2014 -Daula Ram Patel and ors. V/s State and ors.
4. SB Civil Writ petition No.3497/2014 - Shyam Lal Bhati and ors. V/s State and ors.
5. SB Civil Writ petition No.3515/2014 - Mohan Lal V/s State and ors.
6. SB Civil Writ petition No.3531/2014 - Roshni Vishnoi V/s State and ors.
7. SB Civil Writ petition No.3711/2014 - Deendayal Suthar and ors. V/s State and ors.
8. SB Civil Writ petition No.3654/2014 - Bheru Singh Rathore V/s State and ors.
9. SB Civil Writ petition No.3819/2014 - Durga Ram Thori V/s State and ors. 10.SB Civil Writ petition No.585/2014 - Ganesh Lal and ors. V/s State and ors.

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