

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No.361 of 2020

Date of Decision: 01.12.2023

Shri. Tony Ete

Vs.

Union of India & 4 Ors.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P. Yobin, Adv. with
Ms. B. Ramsiej, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. A. Pradhan, Adv.

i)	Whether approved for reporting in Law journals etc:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER

The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner challenging the impugned orders dated 27-03-2019 and 23-12-2019, both issued by the respondent No.4 and also for expunging the remark made in the Integrity Character Certificate dated 22-03-2019 issued by the respondent No.5.

1. The case of the petitioner is that he has completed the DM - Cardiology course in the month of November, 2018 from the North Eastern

Indira Gandhi Regional Institute of Health and Medical Science (NEIGRIHMS) and in response to an advertisement dated 14-02-2019 issued by the respondent No.2, the petitioner took part in a walk-in interview for recruitment of Assistant Professor on *ad-hoc* basis in various department of NEIGRIHMS. The interview was conducted on 28-02-2019 and thereafter the respondent No.3, who was the chairman of the selection committee vide his letter dated 05-03-2019 recommended the name of the petitioner along with others for appointment to the post of Assistant Professor on *ad-hoc* basis in the department of Cardiology. On the basis of the recommendation, an appointment order dated 09-03-2019 was issued to the petitioner asking him to join the post within a period of 15 (fifteen) days and also produce attested copies of certain documents including Integrity/Character Certificate from the last institute worked with. The petitioner joined his post on 12-03-2019, which was provisionally accepted subject to the production of the documents as required by the order of appointment. While the petitioner was working in the department for about 10 (ten) days, the respondent No.5 issued the petitioner with an adverse Integrity Character and Conduct Certificate stating that the integrity of the petitioner is doubtful. As a consequence, the respondent No.4 vide impugned order dated 27-03-2019 cancelled the appointment letter issued to the petitioner.

2. Faced with the situation, the petitioner sought for clarification and raised objection against the issuance of the adverse Integrity Certificate before all the concerned authorities of NEIGHRIHMS and as no relief was forthcoming, he approached the respondent No.1 for redressal of his grievance. Thereafter, as many as three clear instructions from the concerned ministry was issued to the respondent No.3 seeking clarification and also for taking of corrective measures so that carrier aspects of the

petitioner may not be jeopardized. As no corrective measure was taken, the matter was ultimately taken up in the 13th meeting of the Governing Council of the institute at New Delhi on 14-10-2019 whereupon, after detailed discussion, it was concluded that the adverse integrity certificate issued to the petitioner was not justified and, therefore, the petitioner should be allowed to join the post immediately and a fresh character integrity certificate be issued to the petitioner. Thereafter, the petitioner was immediately asked to report for joining as Assistant Professor in the Cardiology Department, which the petitioner did instantly on 14-10-2019 itself. A fresh character and integrity certificate was also issued to the petitioner by the respondent No.5 on 25-11-2019 certifying satisfactory character and conduct of the petitioner. A formal appointment letter appointing the petitioner as an Assistant Professor in the Department of Cardiology on *ad-hoc* basis for a period of six months w.e.f. 14-10-2019 was issued on 23-12-2019 by the respondent No.4. The petitioner thereafter served in the same post till 18-04-2022 on the strength of various extension orders.

3. Mr. P. Yobin, learned counsel appearing for the petitioner submits that it is because of the arbitrary and illegal action on the part of the respondents, the petitioner could not continue in the post which he initially joined on 12-03-2019 pursuant to the recommendation dated 05-03-2019 and appointment order dated 09-03-2019 and in the process, petitioner ended up losing more than six valuable months of his career and he still suffers the stigma of having lost the period of service for no fault of his own. Further, relying on all other past character certificates issued to the petitioner which are annexed with the writ petition, he contends that the adverse Integrity Character and Conduct Certificate dated 22-03-2019 issued by the respondent No.5, which is the main cause of his harassment

and suffering, was also issued without any reasonable cause or justification. He submits that since the impact of the adverse Integrity Character Certificate stood negated by the decision of the Governing Council, the apex body of the NEIGHRIHMS, the impugned action on the part of the respondents in cancelling the initial appointment of the petitioner requires to be interfered by this Court and necessary direction be passed for grant of equitable relief to the petitioner. The petitioner's service deserves to be restored with effect from 12-03-2019 and should be paid salary and other monetary benefit for the period he could not continue in service. With regard to the expunging of adverse remarks made in the Integrity Character Certificate dated 22-03-2019, he submits that since the same stood rectified by subsequent issuance of the certificate dated 25-11-2019, the petitioner has no further prayer. In support of his contention, the learned counsel places reliance on the following decisions of the Apex Court reported in **(2013) 10 SCC 324, Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (paras – 38, 38.1 and 38.2), and (2014) 10 SCC 301, Raghubir Singh V. Haryana Roadways (para – 30).**

4. On the other hand, Dr. N. Mozika, learned DSGI appearing for the respondents submits that since the petitioner has joined the post of Assistant Professor in the Cardiology Department on 14-10-2019 and continued therein till the completion of his tenure pursuant to the decision of the Governing Council and received all the benefits due upon him, he cannot raise any grievance at this stage. The learned counsel further submits that as per the terms of the advertisement dated 14-02-2019, the appointment of the petitioner was purely on ad-hoc basis for a period of six months, extendable up to a maximum period of two years from the date of joining and the petitioner has served for the maximum extendable period. In fact, due to the emergence of exigency because of the outbreak of Covid-

19, the service of the petitioner was extended beyond the prescribed period of two years and the petitioner continued to serve in the department till 18-04-2022. He submits that the period of six months with effect from 12-03-2019 which the petitioner claims to have lost, stood covered up by the extension of service in view of the fact that the petitioner has served for more than two years in the department and received all the monetary benefits thereof. He further submits that the decision of the Governing Council of NEIGHRIHMS dated 14-10-2019 is prospective and all the follow-up actions taken by the department and accepted by the petitioner would definitely mean that the grievance, which petitioner had, was fully redressed. He contends that occurrence of the entire incident in the present matter has no negative impact on the career of the petitioner and the petitioner is not entitled to any further relief from this Court.

5. The submissions advanced by the rival parties have been given careful attention. Taking into consideration the nature of dispute involved in the present matter, it is important to take note of the relevant terms and conditions of the advertisement for recruitment dated 14-02-2019 which reads as follows: -

“The appointment is purely temporary on ADHOC BASIS for a period not exceeding 6 (six) months, or till such time regular appointment against the vacant post is made, whichever is earlier, with effect from the date of joining. If the adhoc service is not extended further, the same will lapse automatically. However, the adhoc appointment shall not be extended beyond the period of two years.”

6. It follows from the above that the maximum period of service which could have been claimed by the petitioner on the basis of the said advertisement was for two years. The petitioner in this case initially joined the post of the Assistant Professor in Cardiology Department on 12-03-

2019 and in the normal circumstances, with all possible extension of service as per the term of the advertisement, would have continued in the same post upto 11-03-2020 had there been no interruption of service due to the cancellation of his initial appointment order. After the decision of the Governing Council of NEIGHRIHMS allowing the petitioner to rejoin the post of the Assistant Professor in the Cardiology Department immediately, petitioner joined the post on 14-10-2019 and continued therein till 18-04-2022, which included the maximum period of extension of service as per the advertisement and additional extension of two terms of three months each due to emergence of Covid-19 pandemic. The petitioner thereby served in the department for full period of two years as per the terms of the advertisement dated 14-02-2019 plus extra six months of extended service on account of emergence of Covid-19 pandemic and admittedly received all the service benefits due thereupon. It is, therefore, clear that the loss which the petitioner claimed to have suffered because of cancellation of his initial appointment by the impugned order 27-09-2019, stood covered up and as such, he cannot have any lawful grievance to be redressed by this Court at this juncture. Consequently, there is no question of restoration of petitioner's service w.e.f. 12-03-2019 and the prayer stands rejected.

7. Insofar as, the question of adverse integrity character certificate is concerned, it is clear that pursuant to the decision of the Governing Council of NEIGHRIHMS directing for issuance of a fresh character integrity certificate to the petitioner, a fresh certificate was issued by the respondent No.5 on 25-11-2019 certifying satisfactory character and conduct of the petitioner. For sake of convenience, the relevant part of the resolution of the Governing Council of NEIGHRIHMS is reproduced hereinbelow: -

“Agenda Item No.2

Issue of Dr. Tony Ete, Ex-post-Doctoral Student (DM Cardiology), NEIGHRIHMS,

After detailed discussion, the Council decided that Dr. Tony Ete, (DM Cardiology) who was selected based on the Walk-in-interview held on 28.02.2019 for the post of Assistant Professor Cardiology (Ad hoc) should be allowed to join immediately as the doubtful Character & Integrity certificate issued by the Institute earlier is not justified. Therefore institute was directed to issue a fresh Character & Integrity certificate. It was also advised to take an assurance from Dr. Tony Ete for maintaining harmonious relationship with all concerned.”

8. A perusal of the relevant part of the decision of the Governing Council would show that the petitioner was also required to furnish assurance for maintaining harmonious relationship with all concerned. The petitioner complied with the said requirement and submitted an undertaking to the department on 25-11-2019 for maintaining harmonious relationship with all concerned in the institute. The aforesaid events definitely put an end to the question of issue of adverse character certificate. The learned counsel for the petitioner also fairly submitted that in view of the issuance of a fresh character integrity certificate to the petitioner, there remains no further grievance. It is, therefore, obvious that the petitioner has accepted and acted on the basis of the decision of the Governing Council of NEIGHRIHMS, and as such, he cannot raise any further grievance with regard to the same issue in this writ petition.

09. The learned counsel for the petitioner at the hearing submitted that the petitioner is at present serving in Tomo Riba Institute of Health and Medical Science (TRIHMS), Arunachal Pradesh and pursuing a successful

career therein. Thus, it is apparent that the incidents basing on which the petitioner has sought for redressal of his grievance in the present writ petition, had no adverse impact in his career.

10. The citations of case law relied on by the learned counsel appearing for the petitioner has no application in the facts and circumstances of the present case and the same do not require any elaborate discussion.

11. For the reasons and discussions made above, the writ petition is devoid of merit and it is hereby dismissed.

12. There will be no order as to costs.



Judge

Meghalaya
01.12.2023
"Biswarup PS"