

Order reserved on : 26.10.2023
Order delivered on : 31.10.2023

Court No. - 7

Case :- WRIT - A No. - 6427 of 2023

Petitioner :- Dr. Ayan Saxena And 3 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Medical Education Lko. And 2 Others

Counsel for Petitioner :- Utkarsh Srivastava

Counsel for Respondent :- C.S.C., Shubham Tripathi

Hon'ble Abdul Moin, J.

1. Heard Sri Sandeep Dixit , learned Senior Advocate assisted by Sri Utkarsh Srivastava, learned counsel for the petitioner, Sri Abhinav Narain Trivedi, learned counsel appearing on behalf of the respondent no. 2 and Sri Shubham Tripathi, learned counsel for the respondent no. 3.

2. Instant writ petition has been filed praying for the following main reliefs:-

(a) Issue a writ. order or direction in the nature of certiorari quashing the Government order dated 08.08.2023 bearing no. M.E-03/2023 1731 (Annexure No.1) issued by the Respondent No. 2 to the Respondent No. 3 University, through which temporary appointment is being sought to be granted to candidates who have cleared the NEET PG 2020 (Degree) and NEET PG (Diploma) to the post of Senior Residents at KGMU, and counselling with respect to the same is being proposed to be held in the month of September, 2023.

(b) Issue a writ, order or direction in the nature of certiorari quashing the PG Medical Compulsory State Service Bond Scheme dated 07.03.2018 bearing Government Order No. 950/71-2-82/2017 (Annexure No. 2) to the extent that it is being illegally made applicable to the appointment of candidates to the post of Senior Resident in the faculty of Dental Science at KGMU;

(c) Issue a writ, order or direction in the nature of mandamus directing the Respondent no. 3 University to extend the tenure of the petitioners on the post of Senior Resident (Unregistered), faculty of Dental Sciences' KGMU to three years from the respective date of appointment of the Petitioners, and to allow them to work and to carry out and fulfil their duties as obligations, as they have doing since the month of December, 2021 when they were initially appointed to the said post at KGMU.

3. The case set forth by the petitioners is that all the petitioners have completed their Master of Dental Surgery (hereinafter referred to as “MDS”) in various years and thereafter applied for the post of Senior Resident (Unregistered) at the Faculty of Dental Sciences (hereinafter referred to as “FODS”) of the King Georges Medical University, Lucknow (hereinafter referred to as “University”) in the year 2021. An entrance examination was conducted in October, 2021 and on the basis of merit, appointment letters were issued to the petitioners for the

post of Senior Resident (Unregistered) in the University in December, 2021. Copy of the appointment letters have been filed cumulatively as annexure 7 to the writ petition. It is contended that though their appointment letters stated that they were being appointed as Senior Resident for a period of one year yet their appointment were extended from time to time vide orders dated 03.01.2023, 22.02.2023, 11.04.2023, 26.05.2023 & 14.07.2023, copies of which have been filed cumulatively as annexure 16 to the writ petition.

4. It is contended that even while the petitioners are continuing as Senior Residents in terms of their appointment made in December, 2021, the respondent no. 2 has issued the order impugned dated 08.08.2023, a copy of which is annexure 1 to the writ petition whereby temporary appointments to the post of Senior Resident is being sought to be granted in the Faculty of Dental Sciences in the University and in pursuance thereof, the term of the petitioners is not being extended.

5. Placing reliance on the statutes of the University, the contention is that as the petitioners are receiving salary from the University consequently, they would be employees of the University and the order impugned which has been issued by the respondent no. 2 cannot be made applicable on the University considering the provisions of Section 66-A of the Uttar Pradesh State Universities Act, 1973 (hereinafter referred to as " Act, 1973").

6. In this regard, reliance has been placed on a Division Bench judgment of this Court in the case of **Smt. Rekha Yadav Vs. State of U.P and Ors** reported in **2012 (13) LCD 1017**.

7. Reliance has also been placed on a letter dated 10.03.2023 issued by the respondent no. 2, a copy of which has been filed as part of annexure SA 3 to the supplementary affidavit dated 05.09.2023 to contend that the respondent no. 2 has itself been considering for making the tenure of Senior Residents as three years and has thus required the State Government to submit a proposal in this regard to the respondent no. 2 for appropriate action and thus keeping in view the proposal dated 10.03.2023 while issuing the order impugned, the term of the petitioners cannot be curtailed.

8. On the other hand, Sri Abhinav Narain Trivedi, learned counsel appearing on

behalf of the respondent no .2 as well as Sri Shubham Tripathi, learned counsel appearing on behalf of the respondent no. 3 have raised a preliminary objection pertaining to the maintainability of the writ petition by the petitioners as regards raising a challenge to the order impugned dated 08.08.2023.

9. The contention is that firstly the order impugned has been issued only for NEET PG-2020 (Degree) & NEET PG-2021 (Diploma Batches) for the purpose of submitting of a bond and directing that the said students should be posted in the college/institution/medical university itself.

10. It is contended that once the order impugned does not pertain to the petitioners who all belong to 2019 batch consequently, the petition deserves to be dismissed on this ground alone.

11. The second objection is that at most the order impugned, if to be scrutinized by this Court, would be of academic interest inasmuch as the appointment letters of all the petitioners themselves indicate that they were appointed as Senior Resident for a period of one year. It was also indicated in their order of appointment that they are required to comply with the direction of the CMS/ MS (Dental)/ Deputy MS (Dental), GM & AH, Lucknow in discharge of the duties as the designated areas. Subsequent thereto, considering that the continuance of the petitioners were in the interest of the patients consequently, the petitioners have been granted extension, the last extension having been granted vide order dated 14.07.2023 (page 205 of the writ petition). It is contended that all the petitioners accepted their initial appointment and the terms and conditions contained therein and thereafter accepted extension and once their initial appointment was only for a period of one year and the said period was extended in the interest of patients consequently, their tenure having ended after one year or after the extension granted to them, they would not have any right of continuing beyond the terms specified and thus even if the validity of the order impugned dated 08.08.2023 is to be seen the same would only have academic interest more particularly when it does not pertain to the petitioners.

12. Apart from the aforesaid, reliance has been placed on Clause 10.01 & 16.01 of the statutes of the University to contend that the said clauses pertain to the faculty members and non teaching staff respectively of the University which

does not indicate that the Senior Resident belong to either of the category of either being faculty members or non teaching staff of the University so as to entail the petitioners to raise a challenge to the order impugned on the ground that it affects them.

13. Heard the learned counsel appearing for the contesting parties and perused the records .

14. From the arguments as raised by the learned counsel appearing for the contesting parties and perusal of records it emerges that all the petitioners have been appointed as Senior Residents (Unregistered) for hospital services in the University. Their appointment admittedly was for a period of one year. The petitioners were granted extension from time to time as per the extension order referred to above, the last extension having been granted vide order dated 14.07.2023 for a period of 45 days or till orders are issued by the respondent no. 2. The dates of extension indicated in the said order range between 15.07.2023 to 18.07.2023.

15. The respondent no. 2 issued the order impugned for the purpose of taking a bond from NEET PG-2020 (Degree) & NEET PG-2021 (Diploma batch candidates) and for permitting them to appear in the counselling for being appointed as Senior Residents in the college/institute/University on a temporary basis.

16. The order has been challenged on the ground that the respondent no. 2 lacks jurisdiction to issue the order impugned so far as it has been issued for the University concerned. Reliance has been placed on the Division Bench judgment of this Court in the case of **Smt. Rekha Yadav (supra)** to contend that as per the provisions of Section 66-A of the Act, 19723, an order can only be issued on policy matters and not in the matters of appointment or day to day functioning of the University.

17. There can be no dispute to the aforesaid proposition of law as laid down by this Court in the case of **Smt. Rekha Yadav (supra)**. However, in the instant case, the said judgment would have no applicability inasmuch as firstly the petitioners have got no right of continuing as Senior Residents beyond the terms for which they had been appointed i.e for a period of one year as extended from

time to time by the University in the interest of patients.

18. Secondly, the case of **Smt. Rekha Yadav (supra)** pertained to an order issued by the State Government and the resolution of the Executive council by means of which the recommendation of the selection committee for grant of senior scale to an employee of the College of Arts and Craft was withheld. In the instant case, as already indicated above, the petitioners cannot be said to be employees of the University inasmuch as, as per the statutes they are neither the teaching faculty nor non teaching staff as both categories of staff have been explicitly spelt out in Clause 10.01 & 16.01 of the Statute which does not include Senior Resident rather the petitioners are Senior Residents who have been appointed on temporary basis/fixed time period for patient care.

19. Thus, even if the order impugned dated 08.08.2023 could not have validly been issued, as per the argument of the learned Senior Advocate appearing on behalf of the petitioners, the Court would not like to enter into the arena as the same would only be of academic interest more particularly when the petitioners appointments were fixed term appointments.

20. Accordingly, the objections raised on behalf of the respondents are upheld and the petition is **dismissed**

Order Date :- 31.10.2023

Pachhere/-