

Court No. - 2

Case :- SPECIAL APPEAL No. - 188 of 2023

Appellant :- Dr. Neha Khattar

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

Counsel for Appellant :- Brijendra Chaudhary, Ravish Kumar

Counsel for Respondent :- C.S.C., Neerav Chitravanshi

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

1. Heard Shri Ravish Kumar, learned Counsel for the appellant, learned Standing Counsel for the State-respondents and Shri Neerav Chitravanshi, learned Counsel for respondent no.2.

2. By means of this appeal, the challenge has been raised to the judgment dated 14.03.2023 passed in Writ -A No.1103 of 2023.

The relief prayed for in the writ petition was as under :-

"(i) Issue a writ, order or direction in the nature of Certiorari quashing the letter dated 03.06.2022 so far as it relates to restraining the petitioner from signing the attendance register which virtually amounts to restraining he from continuing on the post of Dental Surgeon (BDS), District Combined Hospital, Noida, Gautam Buddh Nagar and also quashing order dated 03/06/2022 issued by the Chief Medical Superintendent, District Combined Hospital, Gautam Buddh Nagar so far it relates to restraining the petitioner from signing the attendance register and also from making any payment of salary to her which virtually amounts to restraining her from continuing on the Post of Dental Surgeon (BDS), District Combined Hospital, Noida, Gautam Buddh Nagar (Annexure no1);

(ii) Issue a writ, order or direction in the nature of Certiorari quashing the Letter dated 08/07/2022 issued by the Mission Director, National Health Mission, U.P. (Annexure no.2);

(iii) Issue a writ, order or direction in the nature of Certiorari quashing the report dated 03/01/2023 prepared by the City Magistrate, Noida, Gautam Buddh Nagar (Annexure no.4);

(iv) Issue a writ, order or direction in the nature of Mandamus commanding the opposite parties to permit the petitioner to continue on the post of Dental Surgeon (BDS), District Combined Hospital, Noida, Gautam Buddh Nagar and the opposite parties may further be directed to

pay the salary against the said post to the petitioner.

(v) Issue a writ, order or direction in the nature of Mandamus commanding opposite parties to pay the salary to the petitioner for the post of Dental Surgeon (BDS), District Combined Hospital, Noida, Gautam Buddh Nagar from 04/06/2022 till she is permitted to rejoin on the said post.

(vi) Issue such other writ, order or direction which may be deemed just and proper under the circumstances of the case in favour of the petitioners.

(vii) To allow the writ petition with cost."

3. The writ petition was dismissed on the ground of lack of territorial jurisdiction as also on merits as according to the Writ Court the appellant-petitioner's appointment was contractual one. The question of jurisdiction was considered by us on 27.04.2023 and the said order reads as under :-

"Heard.

Considering Annexure No. 2 dated 08.07.2022 passed by the Mission Director, National Health Mission, U.P. stationed at Lucknow, which was also under challenge in the writ petition by which as claimed of the appellant-petitioner on account of incorrect information sent by the Chief Medical Superintendent, District Combined Hospital, Gautambuddh Nagar or in spite of it, the post on which the appellant-petitioner was working as Dental Surgeon on contractual basis under the Scheme was treated as vacant and the Mission Director at Lucknow issued directions for filling up the same through selection and also the contention of appellant-petitioner that as long as the Scheme subsists the appellant-petitioner though, on contractual basis, is entitled to continue based on her performance appraisal, we find prima facie that part of cause of action was before the writ Court at Lucknow.

As far as the merits are concerned, relevant aspects as to whether even though the appointment was contractual, appellant-petitioner was entitled to continue based on her performance appraisal so long as Scheme subsisted especially in view of the Division Bench judgment 08.07.2011 rendered in Service Bench No. 769 of 2011 (Dr. Devendra Pratap Singh

And Ors. vs. Union Of India Through Secy. Health And Family Welfare), on being asked, the Mission Director's counsel says that Mission Director did not issue any direction to Chief Medical Superintendent at Gautambuddh Nagar for ousting the appellant-petitioner from contractual service, however, he says that Chief Medical Superintendent at Gautambuddh Nagar did not allow the appellant-petitioner to work since June, 2022. The question is once the factum of appointment of the petitioner on the post of Dental Surgeon was brought to the notice of Mission Director at Lucknow, as is evident from his letter dated 08.07.2022 which was impugned before the Writ Court, then why did he not get the facts verified and look into it instead of directing for selection on the post treating it to be vacant.

Let the opposite parties file their counter affidavit in the matter specifically indicating as to under what circumstances, the appellant-petitioner was not allowed to continue as Dental Surgeon on contractual basis since June, 2022, if it is so.

Moreover, we find that if the petition was to be dismissed on the ground of lack of territorial jurisdiction then the Writ Court should not have entered into merits of the issues involved and once it has done so, then we will have to see all the relevant issues in the appeal.

All pleas are open for consideration.

Let pleadings be exchanged between the parties within eight weeks.

List thereafter."

4. We have again revisited the question of territorial jurisdiction for which it is necessary to narrate the facts in brief. It is not in dispute that the petitioner being a Dental Surgeon was appointed on contractual basis on 15.05.2018 under the scheme of the Government known as U.P. Health System Strengthening Project, on contractual basis. Subsequently, this project was taken over by National/State Health Mission Scheme for which Shri Neerav Chitravanshi appears. The order of initial

appointment of the appellant-petitioner dated 15.05.2018 is annexed at page no.92. The same is also annexed as part of the supplementary counter affidavit of the State. Initial appointment was for three months considering the shortage of doctors. Other similar appointments were made in various districts including the district of Gautam Buddh Nagar. In fact various other doctors apart from the appellant-petitioner were appointed in Gautam Buddh Nagar on the same terms. It is not in dispute that such contractual services of the appellant-petitioner as also other doctors similarly engaged including in district Gautam Buddh Nagar were extended from time to time subject to their performance appraisal and there is nothing on record to show that at any point of time, the performance of the appellant-petitioner was found to be deficient in any manner.

5. Now the fact is that on 11.03.2022 the Director, State Health Mission wrote a letter to all the Chief Medical Superintendents of hospitals throughout the State of U.P. asking them to send the data pertaining to such contractual engagements under the aforesaid scheme including the data pertaining to the doctors who had been engaged. The said document is annexed at page no.22 of the counter affidavit filed on behalf of the Director, State Health Mission. We have perused the same. In response thereto, the Chief Medical Officer, Government District Joint Hospital, District Gautam Buddh Nagar send requisite details,

however, while doing so he sent the details of only para-medics and staff nurses. We specifically asked the Counsel for the State as to why the details pertaining to doctors was not sent, no satisfactory reply could be given. In fact the counter affidavit and supplementary counter affidavit according to him, also do not contain any such satisfactory reply. We further asked him as to whether other doctors similarly engaged as the appellant-petitioner in Gautam Buddh Nagar have been allowed to continue, he fairly submitted that they have been allowed to continue as contractual appointees. However, it is stated that the Dental Surgeons are to be appointed at State Level whereas the other doctors are to be appointed at the District Level. This, however, does not explain as to why the details of the appellant-petitioner who was functioning on 11.03.2022 as a Dental Surgeon in the concerned hospital at Gautam Buddh Nagar were not sent to the Director, State Health Mission in response to his letter dated 11.03.2022. Therefore, this was clearly a lapse on the part of the Chief Medical Officer. Moreover, if the recruitment on the post of Dental Surgeon was to be made at the State Level, then the Director, State Health Mission would have the data about the appellant-petitioner and this should have been informed to the Director, State Health Mission. The Counsel for the State, however, invited our attention to the letter dated 03.06.2022 sent by the Chief Medical

Superintendent, Government District Joint Hospital, Gautam Buddh Nagar to the Director, State Health Mission, Lucknow, annexed at page 80 of the appeal, pointing out that vide letter dated 13.05.2022 while issuing directions for filling up the vacant posts of doctors and para medicals in Gautam Buddh Nagar, the post of Dental Surgeon has been left out for the year 2022-2023. It also mentions that the appellant- petitioner Dr. Neha Khattar has been working on the said post and that on 10.06.2021 approval has been granted in her context and she is continuing accordingly. Therefore, the Director, State Health Mission, Lucknow was required to clarify the position in this regard. Now we may point out that after the response dated 30.03.2022 a letter was issued by the Director, State Health Mission, Lucknow on 13.05.2022 for filling up the vacant post, obviously as the post of Dental Surgeon was not disclosed in the communication dated 30.03.2022 that the appellant-petitioner was working on it, therefore, the Chief Medical Superintendent, Gautam Buddh Nagar proceeded on the premise that approval in respect of her has not been granted whereas the fact of the matter is that this was a lapse on the part of the Chief Medical Officer/Chief Medical Superintendent, Gautam Buddh Nagar by not sending her name and informing that she was already working under the scheme in question to the Director, State Health Mission, Lucknow.

6. At this stage, Shri Neerav Chitravanshi, learned Counsel for the Director, State Health Mission says that on 06.06.2022 again similar information was sought which was received vide letter dated 07.06.2022 of the Chief Medical Officer/Chief Medical Superintendent, Gautam Buddh Nagar, but again the name of the appellant-petitioner was not mentioned therein. We are of the opinion that this was again a lapse on the part of the State Authorities. Moreover, a specific communication could have been sought by the Director, State Health Mission, Lucknow regarding the appellant-petitioner Dr. Neha Khattar as to whether she was actually working or not instead of seeking general information.

7. Moreover, Shri Neerav Chitravnshi, learned Counsel for the Director, State Health Mission, Lucknow very fairly submitted that vide letter dated 13.05.2022 communication was issued to the Chief Medical Officer/Chief Medical Superintendent, Gautam Buddh Nagar to initiate process of recruitment for such posts which were to be filled at the District Level and not with regard to the State Level. Therefore, the said letter did not come in the way at all in continuance of the appellant-petitioner as she was doing earlier. According to him, it was a sheer misunderstanding of the situation by the Chief Medical Officer/Chief Medical Superintendent with regard to the appellant-petitioner.

8. Even at the cost of repetition, we may point out that other doctors engaged similarly at the District Level on the same basis are still continuing. There is no order of the Director, State Health Mission to discontinue the services of the appellant-petitioner w.e.f. 03.06.2022, yet the Chief Medical Officer/Chief Medical Superintendent, Gautam Buddh Nagar on an absolute misunderstanding and misconception of facts asked the appellant-petitioner not to sign the attendance register, consequent to which she has not continued as such on contractual basis since then, but without any justification.

9. We have no hesitation in saying that she has been treated unfairly and unjustly merely on account of a communication gap or misunderstanding or misconception of facts at the District Level. Be that as it may, the Director, State Health Mission stationed at Lucknow could have looked into the matter more carefully so as to ensure that no injustice takes place.

10. It is not a case where a conscious decision was taken by the competent authority who was the Director, State Health Mission at Lucknow on the performance appraisal of the respondent or on the ground that there was no need for her service, to not allow her to sign the attendance register as was done by authority at Ghaziabad only under a misconception that no information had been received from the State authority, whereas

Shri Neerav Chitravanshi, learned Counsel for Director, State Health Mission, fairly stated that the information sent to the district was only with respect to the posts which were to be filled at the District Level and there is no decision at the Level of State Health Mission for discontinuing the appellant-petitioner on the same terms on which she was already working.

11. For the reasons already given by us in our earlier order dated 27.04.2024, we have no hesitation to say that the genesis of the dispute has arisen consequent to the letter dated 11.03.2022, issued by the Director, State Health Mission and the miscommunication and misconception of facts in this regard. The letter of the Chief Medical Officer/Chief Medical Superintendent dated 03.06.2022 was not appropriately responded by the Director, State Health Mission stationed at Lucknow that is why the petitioner-appellant has not been continued, of course the fault in this regard does not lie so much at the doors of the Director, State Health Mission, but at the District Level Authority, but nevertheless the Director, State Health Mission could have done the needful for redressing the grievance of the appellant-petitioner. Therefore, specially as the letter dated 08.07.2022 was also under challenge before the Writ Court, we again hold that this Court has territorial jurisdiction to entertain the writ petition and adjudicate it on merits as part of cause of action had arisen at Lucknow.

Moreover, sufficient time has lapsed, we have already entered into the merits of the matter. Further we find that if the Writ Court was not inclined to entertain the writ petition on the ground of territorial jurisdiction, then there was no occasion for it to enter into the merits of the matter. As he had done so and for the reasons aforesaid as part cause of action had arisen in Lucknow, therefore, we set aside the finding of the Writ Court on the question of territorial jurisdiction as also on the grounds of merit in view of the reasons given by us hereinabove.

12. We again reiterate that the appellant-petitioner had been restrained from working w.e.f. 03.06.2022 without any valid ground specially as there is nothing on record to show that her performance was not up to the mark and considering the fact that the said post is still vacant and has not been filled up, we **allow** the appeal as well as the writ petition and set aside the impugned judgment with a direction that she shall be allowed to continue on the same terms on which she was working earlier. Of course if at any stage, question of regularization of services of the appellant-petitioner arises then the period she has remained out of job shall be treated as continuous service, but only for that purpose and for no other purpose.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date :- 2.5.2024

Anand Sri./-