

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Writ Petition No. 19917 of 2015(O&M)

Date of Decision: September 30 , 2015.

Dr. Kasturi Lal

..... PETITIONER (s)

Versus

National Aids Control Organization and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ashok Goel, Advocate
for the petitioner.

Service upon respondent No.1 already dispensed with
vide order dated 18.09.2015.

Mr. Vikas Chatrath, Advocate and
Mr. Deepak Sharma, Ms. Anutosh Garg,
Ms. Madhuri Pundhir, Advocates
for respondent No.2.

None for respondent No.3.

Respondent No.4 *ex parte*.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Prayer in this writ petition is for quashing of circular/order dated 30.05.2014 (Annexure P4) issued by the Government of India, Ministry of Health and Family Welfare, National AIDS Control Organization and setting aside selection of respondent No.4, Ms. Seema Bansal as Medical Officer at Anti

Retro-viral Therapy (ART) Centre, Shaheed Bhai Mani Singh Hospital, Bathinda.

None had appeared on behalf of respondent No.4 despite service on the last date. There is no representation on her behalf today as well. Respondent No.4 is accordingly proceeded against *ex parte*.

Notice of motion was issued by this Court on 18.09.2015 to respondents No.2 to 4 only as it was submitted by learned counsel for the petitioner that it is not necessary to serve respondent No.1 – National AIDS Control Organisation (NACO) in view of the fact that appointing authority for the post in question, is respondent No.3 subject to approval by respondent No.2.

Learned counsel for respondent No.2 submits that reply on behalf of respondent No.2 was filed in the registry on 28.09.2015 and is numbered as CM No.12918 of 2015. Said miscellaneous application is reflected in the cause list, but not being attached with the writ petition was called for and now stands appended with this petition. Copy of the same had been supplied to the learned counsel for the petitioner in advance. Reply is taken on record subject to all just exceptions.

Brief facts are that petitioner is a retired Senior Medical Officer (SMO), from the cadre of Punjab Civil Medical Service. He retired on 30.03.2010. He was appointed on contractual basis as Medical Officer at the ART Centre, Bathinda on 18.08.2010, initially for a tenure of one year. Terms and conditions of the appointment his appointment letter reads as under:-

“Sub: Appointment to the post of Medical Officer on contract basis.

You have been appointed to the post of MO in the office of ART Centre, C.H. Bathinda at the fixed salary of ₹25,000-30,000/- per month for a period of One Year on the following terms and conditions:-

1. The appointment/post is temporary and purely on contract basis.
2. You will be on probation period for 1st six months from the date of joining.
3. The service conditions including pay scales will be governed by the guidelines issued by National AIDS Control Organization (NACO) from time to time.
4. You will have to submit a bond of agreement with Head of Institution.
5. The tenure may be extended for some period or for one year depending upon the work requirement, work performance and conduct of the employee. You will not have any right to demand for extension. The decision of the authorities will be final.
6. You have no claim of any other service benefit, whatsoever, such as regularization of services, incremental benefits/Dearness Allowance or any other allowances or any other benefits not being part of contract.
7. Your jurisdiction of duty will be whole of Punjab and any other area as per orders of authorities.
8. TA/DA will be as per Punjab Government instructions/rules but no TA/DA will be given for joining the duty.
9. 2 ½ days accrued/earned leaves will be allowed per month. 10 days medical leave is also allowed per year (to be supported by Medical certificate). No leave will be allowed during the 1st month.
10. Your contractual appointment can be terminated on one month notice on either side. It will however be open to the Institution to pay you or you may do so by depositing with the Institution your salary in lieu of the notice in respect of the period by which it falls short of the month.
11. In case of any misconduct or your conduct being reported unsatisfactory, your services will be terminated without any notice.
12. If at any time any information/declaration furnished by you in connection with the appointment is found to be false or incorrect, your assignment will be liable for dismissal.”

Contract was subsequently renewed at regular intervals till 31.03.2015 and thereafter vide letter/order dated 01.04.2015 (Annexure P2), his service contract was extended upto 30.09.2015.

It is to be noted that National AIDS Control Organization operating under the aegis of Ministry of Health and Family Welfare, Government of India

has set up a number of Anti Retroviral Treatment (ART) Centres to provide comprehensive package of care, support and treatment services to persons living with HIV/AIDS (PLHIV). Operational guidelines for ART services have been issued on 21.05.2012 and 27.07.2012. In the operational guidelines of July, 2012, it is mentioned that these guidelines focus on the objectives and functions of ART Centres and the process involved in the setting up of ART Centre like infrastructure, equipments, supplies, human resource, SOP's, monitoring tools and financial guidelines for ART centres. These guidelines provide directions for setting up new ART centres and functioning of the existing ones for effective implementation of services. Objectives are mentioned in clause 2.1 as under:-

“One of the key objectives of NACP is to provide care, support and treatment to all PLHIV. With this objective in mind various service delivery points like CoE, ART centres, ART Plus centres, LAC, LAC plus and CCC have been established and are being expanded in a need based manner.

The main objective of Anti-retroviral Therapy (ART) Centre is to provide comprehensive package of Care, Support and Treatment services to persons living with HIV/AIDS (PLHIV). The specific objectives of an ART centre are to:

- 1) Register and provide Care, Support and Treatment services to all PLHIV and monitor patients in HIV care (Pre- ART) regularly
- 2) Identify eligible PLHIV requiring ART and initiate them on ART in a timely manner as per the NACO guidelines
- 3) Provide ARV & OI drugs to eligible PLHIV
- 4) Provide treatment adherence and counselling services before and during treatment to ensure high levels of drug adherence
- 5) Counsel and educate PLHIV, care givers, guardians and family members on nutritional requirements, hygiene, positive living and also on measures to prevent further transmission of infection
- 6) Refer patients requiring specialised services (including

admission) to other departments/higher facilities/CoE

7) Provide comprehensive package of services including condoms and prevention education with a view towards “Positive Prevention”

8) Ultimately integrating HIV care into general health system for long term sustainability.”

Clause 2.6.2 of July 2012 guidelines dealing with the recruitment process for ART centre staff mention the maximum age limit for filling up of contractual positions as 65 years subject to the condition that two attempts for selection of candidates with 62 years age limit fail.

Vide circular/order dated 30.05.2014 Annexure P-4, Government of India, Ministry of Health and Family Welfare revised the upper age limit for engagement of all contractual personnel to be appointed under the National AIDS Control Programme, which reads as under:-

“To

All Project Director,
State AIDS Control Societies

Sub: Upper age limit for contractual personnel.

Sir/Madam,

In supersession of OM No.A11011/69/2007-NACO dated 21.5.2012 & 27.7.2012 (copies enclosed) issued by this Department the revised upper age limit for engagement of all contractual personal at DAC/SACS/District/Facility level will be 60 years. The period of engagement of all contractual personnel except Specialists of repute will end at the age of 62 years.

For existing contractual personnel who are above the age of 62 years, the position is to be advertised on revised eligibility criteria and selection process is to be completed latest by March 2015.

Please note no extension beyond 62 years will be allowed w.e.f. April 15 unless approved by the competent authority.”

Pursuant to issuance of this notification, advertisement dated

22.07.2015 (Annexure P9) was issued for filling up of various posts at the ART

Centre including that of Medical Officer on the which the petitioner's service had been extended till 30.09.2015. Petitioner admittedly never applied nor challenged this advertisement.

Present writ petition has been filed claiming that circular/order dated 30.05.2014 (Annexure P4) revising the upper age limit is liable to be quashed. Selection of respondent No.4 – Ms. Seema Bansal is impugned on the ground that she is not eligible as per the qualification laid down in the Operational Guidelines for ART services specifically clause 2.6.4.3 as well as the abovesaid advertisement. It is submitted that as per clause 2.6.4.3 and the advertisement, ART Medical Officer should essentially be an MBBS trained person by NACO at one of the NACO designated training centres.

It is vehemently argued by learned counsel for the petitioner that though appointment of the petitioner is purely contractual on the said post, he is entitled to continue on the said post as the revision in the upper age limit is not justified and has no basis. It is specifically averred that respondent No.4 has not received the essential training at a NACO designated training centre as required. Therefore, respondent No.4 is not eligible to be appointed on the said post and has been wrongly appointed to the said post. Petitioner cannot be replaced by another contractual employee. Therefore, writ petition should be allowed. No other argument has been raised.

Learned counsel for respondent No.2 submits that in view of circular/order dated 30.05.2014 (Annexure P4), no right accrues to the petitioner to continue on the said post. There is no ground whatsoever for setting aside the said order/circular. It is further informed that as per clause 2.6.5 of the

Operational Guidelines for ART services, which deals with capacity building of ART Centre staff, it is provided that to ensure uniform standards of services, adherence to operational guidelines and treatment protocols, induction training is provided to various personnel using standard curriculum, training module and tools at identified institutions. Various training programmes are organized for ART staff including training of Medical Officers (SMO/MO) of ART Centres for 12 days. Respondent No.4 would undergo the said training. As far as the petitioner himself is concerned, when he was appointed in August, 2010, he had to undergo the said training after his appointment.

Furthermore, petitioner never participated in the selection process pursuant to advertisement dated 22.07.2015. He is estopped from challenging this selection by his conduct. No ground whatsoever is made out for any indulgence to the petitioner, who is admittedly a contractual employee. Furthermore, in view of the specific revision of the upper age limit, it is not possible for the petitioner to be retained on the said post. It is further submitted that it is not a case wherein any mala fide is alleged qua any person in the selection of respondent No.4.

I have heard learned counsel for the parties and gone through the file and the operational guidelines July 2012 produced in Court.

Admittedly, petitioner has crossed the age of 62 years. As per order/circular dated 30.05.2014 (Annexure P4), no person can be appointed beyond the age of 62 years. It is specifically mentioned that the upper age limit would be 60 years and in case of Specialists of repute it is 62 years. No extension beyond 62 years can be allowed w.e.f. April 15, 2015 unless approved

by the competent authority. Though prayer in this writ petition is for quashing of the said order/circular, learned counsel for the petitioner is unable to point out any ground whatsoever for setting it aside. It is to be noted that Government of India, Ministry of Health and Family Welfare has not been arrayed as a party. Service of notice upon respondent No.1 has been dispensed with in view of the statement made by learned counsel for the petitioner on 18.09.2015. There is no averment or argument that Annexure P4 has been issued by the an incompetent authority or is ineffective. Neither is the petitioner able to point any ground to suggest that revision in the upper age limit is illegal.

It is not denied that the said impugned order/circular has been issued in supersession of OM No.A11011/69/2007-NACO dated 21.05.2012 and 27.07.2012. It is admitted that the orders/circulars dated 21.05.2012 and 27.07.2012 are the operational guidelines of ART services. These are the very guidelines the petitioner rests his case on, for continuing on the said post.

Learned counsel for the petitioner is unable to point out any ground which suggests that impugned order/circular, Annexure P4 is liable to be set aside. Once the upper age limit has been revised as 62 years in the case of Specialists of repute, petitioner can obviously have no claim to continue on the said post despite the experience he may have gained during his service. The ground that he cannot be replaced by another contractual employee would also not be available to him because admittedly he does not fulfill the criteria of age as stipulated.

It is further admitted that the petitioner never applied for the post in question pursuant to the advertisement dated 22.07.2015, Annexure P9. It is

candidly admitted by learned counsel for the petitioner that at the time of initial appointment of the petitioner, he had indeed undergone the required training at the NACO Centre subsequent to his appointment. It is however submitted that at that point of time it was not essential for the appointee to be trained at a NACO designated centre. In this view of the matter, even if the selection of respondent No.4 is held to be incorrect, no right whatsoever would accrue to the petitioner whose tenure comes to an end today itself. He has no vested right to continue on the said post beyond the contractual period in the facts and circumstances of this case.

Consequently, this writ petition is dismissed with no order as to costs.

September 30 , 2015.
'om'

(LISA GILL)
JUDGE