

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 811 of 2021**

- Dr. Dipak Sharma S/o Shri Ram Gopal Sharma Aged About 64 Years R/o Deepak House, Jal Grih Marg, Tikrapara, Raipur Tehsil And District Raipur Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Public Health And Family Welfare, Mahanadi Bhawan, Naya Raipur, Post Office And Police Station Naya Raipur, District Raipur Chhattisgarh.
2. Dean Office Of Dean, Pt. Jawahar Lal Nehru Memorial Medical College, Jail Road, Raipur Chhattisgarh.
3. Dr. Shipra Sharma Medical Superintendent Cum Academic In Charge, Dau Kalyan Singh Post Graduate Institute And Research Center, Raipur Chhattisgarh.
4. The Head Of Department Department Of Burn, Plastic And Reconstructive Surgery, DKS Super Specialty Hospital, Raipur Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. B.P. Sharma, Advocate with Mr. Vaibhav Tiwari, Advocate
For State	:	Mr. Alok Buxy, Addl. A.G. with Mr. Rahul Jha, G.A.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

23/02/2021

1. The present writ petition has been filed by the petitioner claiming for the following reliefs :

“10.1 A writ and / or an order in the nature of appropriate writ do issue calling the records of the below pertaining to the case of the petitioner for perusal of this Hon'ble Court, if this Hon'ble Court thinks fit in the facts and circumstances of the case.

10.2 A writ of certiorari and/or an order quashing the order dated 13.01.2021 being arbitrary, illegal and contrary to the law.

10.3 A writ of mandamus and / or an order in effect to directing the respondent authorities to allow the petitioner to render his services to department in accordance with law and respondent authorities be directed to comply the reciprocal obligation.

10.4 A writ of mandamus and/or an order in effect to directing the respondent authorities initiate departmental enquiry against the person in fault and proceed further in accordance with law apart from being payable for the damages to petitioner to the extent deem fit by this Hon'ble Court, in the facts and circumstances of the case, in the interest of justice.

10.5 Any other relief, which this Hon'ble Court deems fit and proper, may also kindly be granted to the petitioners, in the interest of justice.”

2. The facts, relevant for disposal of the present writ petition, in brief, are that the petitioner was a Government doctor and a General Surgeon for quite sometime and retired from service on attaining the age of superannuation. Subsequent to his retirement, the respondents have re-engaged the petitioner on contractual basis from time to time and the petitioner last time was granted renewal of the contractual engagement vide Annexure P/2 dated 16.01.2020. The contractual engagement was for a fixed term of one year till 16.02.2021. That, on being given contractual employment the petitioner was posted in the Surgery Department of the respondent-Medical College. Thereafter the petitioner was by an order posted at

Plastic Surgery Department, where the petitioner was discharging his duties. Meanwhile, the petitioner was infected with COVID-19 virus and his health condition got deteriorated and he had to be hospitalized for a couple of months on account of which he could not discharge his duties effectively.

3. The authority concerned also meanwhile had assessed and evaluated the services of petitioner and considered for grant of extension of the petitioner's contractual engagement and accordingly, the State authorities have granted another renewal of contractual engagement to the petitioner vide order dated 15.01.2021. The petitioner has been given another contractual engagement between 18.01.2021 to 17.01.2022. In the meanwhile, by the order impugned, the respondent No.3, the Medical Superintendent cum Academic In-charge has posted the petitioner by relieving him from Plastic Surgery Department to the Surgery Department.
4. Thus, according to the petitioner, it is *mala fide* and has been done on account of malice at the end of respondent No.3 which she has for the petitioner. According to the petitioner, malice on the part of respondent No.3 is evident by the assessment she has made for the petitioner's work wherein she has made observation or comment that the petitioner is not able to discharge his duties effectively. The comment or observation made was in respect of his performance during the contractual engagement of the petitioner for the period between January, 2020 to January, 2021.

5. According to the petitioner, in spite of this, taking the overall performance of the petitioner and the assessment, the respondent authorities granted renewal of one more year vide order dated 15.01.2021. The petitioner has been given another contractual appointment from 18.01.2021 to 17.01.2022 and since the respondents have granted fresh appointment to the petitioner, the authorities were duty bound to have taken work from the petitioner in the Plastic Surgery Department itself where the petitioner has been posted by the respondent No.2 / Dean of the Medical College.
6. According to the petitioner, once the Dean has posted the petitioner in the Plastic Surgery Department, the same could not have been altered or modified by an officer subordinate to the Dean and hence the order of relieving of the petitioner on 13.01.2021 from the Plastic Surgery Department to the Surgery Department needs to **be interfered with by this Court.**
7. Per contra, learned Additional Advocate General appearing for the State, at the outset, submits that the order vide Annexure P2 which was issued on 16.01.2021 granting contractual engagement to the petitioner from 16.01.2020 to 15.01.2021 would show that the petitioner has been appointed in the Surgery Department of the respondent-Medical college. Learned Additional Advocate General further referring to the order issued on 15.01.2021 which is the renewal of the contractual engagement to the petitioner would again point out that the petitioner has, in fact, again being appointed in the Surgery Department. He also submits that the respondents have not in any manner discontinued the service of the petitioner, they are still taking work from the petitioner i.e. in the Surgery Department where

the substantive posting of the petitioner was made vide his order of appointment. According to him, since it is only an issue of place of posting of the petitioner, the same cannot be a matter which could be subjected to judicial review under Article 226 of the Constitution of India and the writ petition needs to be rejected at the threshold.

8. I have heard learned counsel for the parties and perused the documents appended thereto.
9. If we take into consideration the entire facts and circumstances of the case, indisputably the petitioner has been appointed on contractual basis from time to time post retirement under the respondent. The previous engagement of petitioner on contractual basis was by the order Annexure P2 dated 16.01.2020. After one year of service, on due evaluation of work of the petitioner, the respondents have again vide order dated 15.01.2021 granted one more year of contractual appointment to the petitioner. Both these orders reflect that the engagement was for the Surgery Department. Undoubtedly, the petitioner is a General Surgeon. The impugned order dated 13.01.2021 relieving the petitioner from Plastic Surgery Department and posting him to the Surgery Department is only an internal arrangement on the administrative side which was made by the administrative authorities managing the medical institution which is well within the domain of the authorities/management.
10. What is primarily to be taken note is that the petitioner has been attached to the Surgery Department under the respondent and he has been permitted to discharge his duties in the same department. There does not seem to be any infringement of any of

the rights conferred on the petitioner by virtue of the contractual appointment inasmuch as there is no curtailment of any of the benefits which he would have otherwise got under the contractual appointment. Moreover there is clear categorical submission made by the Learned Additional Advocate General that the services of the petitioner continues in the Surgery Department.

11. As regards comment or observation made by respondent No.3 so far as the petitioner not being able to discharge his duties effectively is concerned, this Court is of the opinion that these comments loses its efficacy in the light of the subsequent re-appointment of the petitioner on 15.01.2021 and hence the same cannot be treated as stigmatic, so far as the service of the petitioner for the year 2021-2022 is concerned.

12. As a sequel, the present writ petition deserves to be and is hereby disposed of with the aforesaid observations.

SD/-
(P. Sam Koshy)
Judge