

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 2090 OF 2021**

1. Dr. Nikita Gupta, D/o Shri Rajkumar Gupta, Aged About 25 Years Posted As - Medical Officer, 100 Bedded Maternal And Child Health, Ambikapur, District - Surguja, R/o Bauripara Kenabandh Chowk, Ambikapur, District - Surguja Chhattisgarh.
2. Dr. Chandrakala Thakur, D/o Mr. Daulal - Ram Thakur, Aged About 26 Years Posted As - Medical Officer, Maternal And Child Health, District - Rajnandgaon, R/o - Risali Sector, Bhilai, District - Durg Chhattisgarh.
3. Dr. Preeti Paikara, D/o Shri Hira Singh Paikara, Aged About 25 Years Posted As - Medical Officer, District Hospital, District Kanker, R/o - Ramdas Bada, Sanjay Nagar, District - Kanker Chhattisgarh.
4. Dr. Pooja Gayakwar, D/o Shri Dhansay Gayakwar, Aged About 50 Years Posted As - Medical Officer, 50 Bedded, Maternal And Child Health, District - Balodabazar, R/o Lawan Road, District Balodabazar Chhattisgarh.
5. Dr. Pritibala Ghritlahare, D/o Shri Dinesh Ghritlahare, Aged About 27 Years Posted As - Medical Officer, Maternal And Child Health, District - Balodabazar, R/o Kasdol, District - Balodabazar Chhattisgarh.
6. Dr. Sulekha Kujur, D/o Shri Subodh Kujur, Aged About 26 Years Posted As - Medical Officer, 100 Bedded Maternal And Child Health, Ambikapur, District - Surguja, R/o Godhanpur, Ambikapur, District - Surguja Chhattisgarh.
7. Dr. Manu Pratap Singh, S/o Shri Bindeshwar Dayal Singh, Aged About 26 Years Posted As - Medical Officer, Primary Health Center Bandana, District - Surguja, R/o Khamhariya, Block Udaipur, District Surguja Chhattisgarh.
8. Dr. Vibhuti Nayak, W/o Shri Vaibhav Vishwakarma, Aged About 24 Years Posted As - Medical Officer, Maternal And Child Health, District - Rajnandgaon, R/o Basantpur, District - Rajnandgaon Chhattisgarh.
9. Dr. Roopam Singh, D/o Shri N.B. Singh, Aged About 29 Years Posted As - Medical Officer, 100 Bedded Maternal And Child Health, Ambikapur, District - Surguja, R/o Bouripara, Ambikapur, District - Surguja Chhattisgarh.
10. Dr. Swati Kurrey, D/o Shri Ramdhar Kurrey, Aged About 29 Years Posted As - Medical Officer, 100 Bedded Maternal And Child Health, Ambikapur, District - Surguja, R/o Lakhanpur, District - Surguja Chhattisgarh.
11. Dr. Anjali Ekka, D/o Mr. Prabhu Prakash Ekka, Aged About 26 Years Posted As - Medical Officer, 100 Bedded Maternal And Child Health, Ambikapur, District - Surguja, R/o Gangapur, Ambikapur, District - Surguja Chhattisgarh.
12. Dr. Poonam Paikra, D/o Shri Shankar Ram, Aged About 30 Years Posted As - Medical Officer, 100 Bedded Maternal And Child Health, Ambikapur, District - Surguja, R/o Badkimahari, District - Balrampur - Ramanujan Chhattisgarh.
13. Dr. Yogesh Kumar Singh, S/o Shri Magheram Singh, Aged About 27 Years Posted As - Medical Officer, Primary Health Center, Dumardih, District - Durg, R/o Raghunathpur, Lundra, District - Surguja, Chhattisgarh.

14. Dr. Chandraprabha Singh, D/o Shri Indrajeet Singh, Aged About 30 Years Posted As - Medical Officer, Community Health Center, Rajpur, District - Balrampur - Ramanujganj, R/o - Ambikapur District - Surguja Chhattisgarh.
15. Dr. Sateshwar Singh, S/o Shri Ramdhan Singh, Aged About 28 Years Posted As - Medical Officer, 50 Bedded Hospital Kamleshwarpur, District - Surguja, R/o - Churha Colliery, District - Korea Chhattisgarh.
16. Dr. Manish Kumar Barwa, S/o Shri Lal Sai Ram, Aged About 31 Years Posted As - Medical Officer, Primary Health, Narmadapur, District - Surguja, R/o Sitapur, District - Surguja Chhattisgarh.
17. Dr. Jyoti Beck, D/o Shri Dhaneshwar Beck, Aged About 28 Years Posted As - Medical Officer, 50 Bedded, Maternal And Child Health Hospital, Udaipur, District - Surguja, R/o Mainpat, District - Surguja Chhattisgarh.
18. Dr. Mahamaya Pratap Singh, S/o Shri Ram Kumar Singh, Aged About 32 Years Posted As - Medical Officer, District Hospital, District - Surajpur, R/o Tilsiwa, District - Surajpur Chhattisgarh.
19. Dr. Mohammed Lukman Khan, S/o Shri Md. Iqbal Khan, Aged About 36 Years Posted As - Medical Officer, 50 Bedded Maternal And Child Health Bhairathan, District - Surajpur, R/o Kosabadi, District - Korba Chhattisgarh.
20. Dr. Dinesh Kumar Painkra, S/o Shri Harilal Sai Painkra, Aged About 31 Years Posted As - Medical Officer, 100 Bedded, Maternal And Child Health District - Surajpur, R/o Bagicha, District - Jaspur Chhattisgarh.

... Petitioners

versus

1. State of Chhattisgarh, Through The Secretary, Department Of Health And Family Welfare, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur Chhattisgarh.
2. Principal Secretary, Finance Department, Mantralaya, Mahanadi Bhawan, Nava Raipur Atal Nagar, District - Raipur, Chhattisgarh.
3. Secretary, General Administration Department, Mantralaya, Mahanadi Bhawan, Nava Raipur Atal Nagar, District - Raipur, Chhattisgarh.
4. Director, Department Of Health Services, Indravati Bhawan, Nava Raipur Atal Nagar, District - Raipur, Chhattisgarh.
5. Additional Chief Secretary, Finance Department, Mantralaya, Mahanadi Bhawan, Nava Raipur Atal Nagar, District - Raipur, Chhattisgarh.
6. Joint Secretary, Finance Department, Mantralaya, Mahanadi Bhawan, Nava Raipur Atal Nagar, District - Raipur, Chhattisgarh.
7. Under Secretary, Finance Department, Mantralaya, Mahanadi Bhawan, Nava Raipur Atal Nagar, District - Raipur, Chhattisgarh.

... Respondents

For Petitioners	:	Mr. Ishan Verma, Advocate.
For Respondents	:	Mr. Amrito Das, Addl. A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

[10.06.2021]

- 1.** Petitioners in the present Writ Petition have challenged the Finance Order No.21/2020, Dated 29.7.2020 (Annexure P-1) issued by the Finance Department, Government of Chhattisgarh, Raipur. The State Government has by virtue of the said Finance Order fixed the probation period of fresh recruits to be 3 years instead of 2 years as it was earlier.
- 2.** Petitioners have also questioned the Corrigendum dated 27.10.2020 (Annexure P-5) whereby the Respondents have amended the earlier issued Appointment Order to the extent of extending the period of probation from 2 years to 3 years.
- 3.** Petitioners have also sought for a relief of an appropriate direction to Respondents for providing them the pay scale to the post against which they have been appointed in terms of the disclosure made in the Advertisement through which they were appointed.
- 4.** Brief facts relevant for the disposal of the present Writ Petition are that all the Petitioners herein had applied for the post of Medical Officer pursuant to the Advertisement dated 8.5.2020 (Annexure P-2) for appointment in the Department of Health and Family Welfare, Government of Chhattisgarh. After the Petitioners undergone the selection process, they were all found meritorious and issued with Appointment Order on 27.10.2020. Thereafter, there was yet another Order dated 27.10.2020 (Annexure P-5) which was a correction order issued whereby the probation period stood enhanced to 3 years from 2 years. It is this action which is primarily challenged by the Petitioners and against which they are more aggrieved of.
- 5.** Subsequent to the Advertisement dated 8.5.2020, the State Government has published the Finance Order No.21/2020, Dated 29.7.2020 (Annexure P-1). Vide the said Finance Order, the State Government has amended sub-rule 1 of Rule 8 of the Chhattisgarh Civil

Services (General Conditions of Service) Rules, 1961 (henceforth shall be referred to as, "the Rules of 1961"). By way of the amendment to the Rules of 1961, the State Government has enhanced the probationary period of new recruits from 2 years to 3 years. At the same time, the State Government also vide the same Finance Order has amended sub-rule 1 of Rule 22(c) of the Fundamental Rules prescribing the stipend payable to Government servant selected by way of direct recruitment. In terms of the amendment made to the Fundamental Rules, during the probation period of 3 years the Government servant shall get the payment of 70% for the first year, 80% for the second year and 90% for the third year and on successful completion of the 3 years' probation period, the employee would be getting 100% payment. This action on the part of the Respondents also is under challenge through the present Writ Petition.

6. The challenge by the Petitioners is on the ground that when the recruitment has been done in terms of the Advertisement dated 8.5.2020, the probation period as also the payment payable to a probationer all should had been as it was prevailing on the date of Advertisement i.e. on 8.5.2020. It was also the contention of the Petitioners that the recruitment has been made on the post of Medical Officer by way of a direct recruitment and the service conditions governing the field is the Chhattisgarh Medical Officers (Gazetted) Service Recruitment Rules, 2013. Under the said Rules, the Clause-13 specifically provides for the probation period of the person recruited to the service is 2 years and in the absence of any amendment to the said Rules, applying the Finance Order dated 29.7.2020 and enforcing the amendment to the Rules of 1961 is *per se* illegal and contrary to law. According to Petitioners, once when the recruitment process has been put into play by issuance of the Advertisement and by initiating the recruitment process, the rules of the

game cannot be changed subsequently detrimental to the interest of the Petitioners and on this ground also the Petition deserves to be allowed and the Petitioners should be granted suitable appropriate relief.

7. Learned Additional Advocate General, on the contrary, opposing the Petition submits that the Writ Petition at the outset is not maintainable, for the reason that by way of the Finance Order under challenge, the basic service rules governing the field which are the Rules of 1961 stand amended. Thereby, as per sub-rule 1 of Rule 8 of the Rules of 1961, the probation period for all the Government servants stands increased from 2 years to 3 years. It is also the contention of learned Additional Advocate General that by the same Finance Order, the Fundamental Rules also stand amended and under sub-rule 1 of Rule 22(c) of the Fundamental Rules, the payment of stipend part has also been specifically envisaged. The objection raised by learned Additional Advocate General is, since the said two basic Rules by virtue of the Finance Order dated 29.7.2020 stand amended, unless those Rules are also challenged the present Writ Petition only challenging the Finance Order may not be of any help to the Petitioners.

8. Further contention of learned Additional Advocate General is that after the amendment to the Rules it is those amended Rules which are in force for all practicable purpose. The appointment orders to the Petitioners were issued on 27.10.2020. Thus, on the date of appointment it would be whatever Rules which were in force then, that would be applicable as the service conditions of the employees appointed and that cannot be diluted to the extent that for the Petitioners it would be the Rules which were in force at the time of Advertisement which would be applicable. Merely because the Advertisement was issued by itself would not create any estoppel from the applicability of the Rules governing the field.

9. Similar is the contention of learned Additional Advocate General that in view of the amendment brought to the Fundamental Rules where the probation period and the stipend payable during the probation period having been amended, unless the Rules are challenged and are held to be bad in law, it would be only those Rules which could be applied. According to learned Additional Advocate General, once when the Rules have come into force, any order of appointment issued after the coming into force of the amended Rules, the Government servant recruited subsequent would be governed by the amended Rules and he can be paid in terms of the amended Rules alone. Learned Additional Advocate General thus prayed for the dismissal of the Writ Petition.

10. Having heard the contentions put forth on either side and on perusal of the record, admittedly, pursuant to the Finance Order No.21/2020, Dated 29.7.2020, the Rules of 1961 as also the Fundamental Rules stand amended. Again from the plain perusal of the Relief clause of the Writ Petition, it clearly reflects that the Rules of 1961 as also the Fundamental Rules are not under challenge.

11. Another admitted fact which is reflected from the pleadings is that the appointment orders issued in favour of the Petitioners were much after the amendment brought in to the Rules of 1961 as also the Fundamental Rules. Thus, it cannot be said that on the date of issuance of the order of appointment, there were some other Rules which were applicable and the terms and conditions of the service governing the field have been changed subsequently. Rather, it is a case where it was the Rules in force which were made applicable upon the Petitioners and unless the Rules are challenged and are struck down, the relief sought for by the Petitioners cannot be granted only by challenging the Finance Order.

12. Pursuant to the Finance Order, the very Rules itself have been amended and brought into force and the amended Rules had come into force also much before the appointment orders were issued. That, once the Rules stand amended pursuant to the Finance Order, the Finance Order as such loses its importance and relevance and thereafter it is the Rules which would be governing the field. Therefore, it would be the amended Rules in force on the date of appointment which would be governing the field and not the Rules applicable at the time the Advertisement was issued.

13. In the given facts and reasons, this Court does not find any strong case made out by the Petitioners in the present Writ Petition and therefore the Writ Petition in its present form deserves to be and is accordingly dismissed. However, the dismissal of the present Writ Petition would not preclude the Petitioners from challenging the Rules by way of appropriate Petition.

14. Writ Petition accordingly stands dismissed.

Sd/-
(P. Sam Koshy)
Judge