

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr.No.112

Civil Writ Petition No.8887 of 2021

Date of Decision: 28th April, 2021.

Dr. Jai Parkash

...Petitioner

Versus

State of Haryana & Ors.

...Respondents

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Lajpat Rai Sharma, Advocate,
for the petitioner.

Mr. S.S.Pannu, DAG, Haryana,
for the respondents.

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MEENAKSHI I. MEHTA, J.

By way of the instant writ petition, the petitioner has approached this Court for seeking the relief of the issuance of a writ in the nature of certiorari quashing the letter dated 01.12.2020 (Annexure P-5) circulated by respondent No.3 for providing the guidelines regarding the maximum age limit of the employees working under the National Health Mission (for short, 'the NHM') as well as the order dated 26.03.2021 (Annexure P-6) as issued by respondent No.4 intimating him therein that the letter of contract qua his service would be effective only till 30.04.2021 in view of the order Annexure P-5 and he has further prayed for the issuance of a writ in the nature of mandamus directing the respondents to allow him to work and continue on his post at par with other Specialists/Medical Officers/MBBS and to renew his contract.

2. Shorn and short of unnecessary details, the averments as set forth by the petitioner in this petition, are that in pursuance of the advertisement as got published by the respondents in the newspaper in the year 2014 for filling up various posts under the NHM including the post of Homeopathic Medical Officer, he had applied for the said post and had participated in the selection process and was appointed as such on 12.08.2014 on the contract basis and he joined the service on 14.08.2014 at CHC Kairu in District Bhiwani against a sanctioned vacant post and since then, he has been discharging his duties diligently. As per the terms and conditions of the contract, the same was annually renewable after every 31st of March and the same is being renewed from time to time and vide the latest letter Annexure P-4, it has been renewed for the year 2020-21.

3. The petitioner has, further, averred that respondent No.3 has issued the impugned letter Annexure P-5 mentioning therein that as per the approval given in the meetings of the Executive Committee as well as of the Governing Body of the State Health Society (for short, “the SHS”), the maximum age limit of all the employees working in the NHM (except Specialist and Medical Officer, MBBS), whether on contractual or outsourcing basis, would be 58 years and for the Specialists and Medical Officers (MBBS), it would be 65 years provided they will perform clinical work. The above-said letter/order is illegal and discriminatory and the impugned order Annexure P-6, as issued in view thereof, to intimate him qua the contract of his service being effective only up to 30.04.2021 on his attaining the age of 58 years in the month of April 2021, is also unjustified and arbitrary.

4. I have heard learned counsel for the petitioner as well as learned State counsel in the present petition at the preliminary stage and have also gone through the file thoroughly.

5. Learned counsel for the petitioner has referred to the letter dated 21.12.2012 issued by the Director General AYUSH, Haryana and has pointed out that in Column No.3 providing the essential qualification of Homeopathic Medical Officer therein, the maximum age limit has been mentioned as 'upto 62 years' and he has contended that thus, it is quite explicit that vide the impugned letter/order Annexure P-5, the respondents have illegally reduced the same as 58 years. He has also pointed out that vide the memo dated 10.03.2014 and letters dated 18.02.2013, 10.10.2013 and 19.02.2014, the Central Government had decided to utilize/avail the services of the AYUSH Practitioners for maternal health, child health, family planning etc. and to involve them in 'the Rashtriya Bal Swasthya Karyakram' and also to train them as SBAs as well as to impart training to the AYUSH providers to perform certain procedures and he has further contended that in view of the afore-mentioned letters, it becomes clear that the petitioner has also been performing the same duties as performed by the MBBS qualified doctors and it being so, he cannot be discriminated on the point of the maximum age limit vis-a-vis the doctors who have been allowed to continue in service up to the age of 65 years. Lastly, he has drawn the attention of this Court to the Service Bye-laws Governing the Conditions of Service of the Contractual Employees of the State Health Mission, Haryana, 2018 (for short, 'the Service Bye-laws, 2018) and has pointed out that as per Clause 3(1) therein, the 'Specialist' has been defined as "*the Medical officer, Specialist and other*

qualification in which at least the qualification of MBBS is mandatory” and has contended that the said clause of the Service Bye-laws, 2018 is also discriminatory vis-a-vis the Homeopathic Medical Officers and it deserves to be set aside.

6. However, the above-discussed contentions do not hold much water because as regards the maximum age limit of 62 years as provided in the afore-said letter dated 21.12.2012, it is pertinent to mention here that the said letter had been issued by the Director General, AYUSH Haryana and even the impugned letter/order Annexure P-5 has also been issued by the Mission Director, NHM prescribing the maximum age limit for the employees working in the NHM (except Specialist and Medical Officer, MBBS) whether on contractual or outsourcing basis, to be 58 years. It is entirely within the domain of the employer to determine the terms and conditions of the services of the contractual employees and that too, in the eventuality when the contract of service of such employees is to be extended on annual basis as is categorically mentioned in para 7 of this petition itself and it has also been specifically mentioned in Clause (5)(e) of the Contract/Agreement Annexure P-2, which has, admittedly, been extended on annual basis, that the parties, i.e the Civil Surgeon concerned and the petitioner, had mutually agreed that the services of the petitioner could be terminated by giving 15 days' notice, without assigning any reason.

7. So far as the above-referred letters as issued in respect of availing the services of AYUSH Practitioners are concerned, the same do not suffice at all to entitle the petitioner to claim the maximum age limit for his service at par with the Specialist and Medical Officer (MBBS), i.e upto 65

years, because they fall within the definition of term ‘Specialist’ as provided in said Clause (3)(1) of the Service Bye-laws, 2018 which requires them to have/possess the least qualification of MBBS degree and thus, the afore-referred letters qua availing the services of the AYUSH Practitioners for certain purposes, can, by no stretch of imagination, be taken to be sufficient at all to consider the petitioner as 'Specialist' in terms of the said definition. In the present petition, the petitioner has not laid any challenge to the said provision of the Service Bye-laws, 2018 which govern and are applicable to the terms and conditions of his service.

8. As a sequel to the foregoing discussion, it follows that this petition is devoid of any merit and therefore, it deserves dismissal. Resultantly, the same stands dismissed accordingly.

(MEENAKSHI I. MEHTA)
JUDGE

28.04.2021.
seema

Whether speaking/reasoned?	Yes/No
Whether Reportable?	Yes/No