

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 21781 of 2010

***Debasis Bhattacharya and
another***

....

Petitioners

M/s. N. Lenka, Advocate

-versus-

State of Orissa and others

....

Opposite Parties

M/s. B.P. Tripathy, Advocate

CORAM: JUSTICE V. NARASINGH

ORDER

30.08.2022

Order No.

05.

1. This matter is taken up through hybrid mode.
2. Heard Mr. N. Lenka, learned counsel for the petitioner and Mr. Tripathy learned counsel for Opposite Party No.4 .
3. The petitioners have assailed the order dated 29.11.2010 issued by the C.D.M.O. Keonjhar (Annexure-19) and the order dated 09.12.2010 issued by the Commissioner-cum-Secretary, Health and Family Welfare Department, Government of Orissa (Annexure-20) rejecting their claim for engagement as Ayush Doctors.
4. The petitioners (Ayush Doctors) were engaged as Medical Officer, under Mobile Health Units (in short M.H.U) on contractual basis as per the order of the C.D.M.O. Keonjhar dated 02.03.2009 (Annexure-3). Names of the petitioners are at Serial No.6 and 10 of the said Annexure. They approached this Court by filing W.P.(C)

No.13862 of 2010 challenging their disengagement from contractual service since 28.04.2010 as AYUSH Doctor.

5. On consideration of their grievance, this Court by order dated 19.08.2022 disposed of the Writ Petition by the following order;

x x x x x “ 19.08.2010: Learned counsel for the petitioners undertakes to remove the defects within a week.

Heard Mr. Lenka, learned counsel for the petitioners and Mr. Senapati, learned Additional Govt. Advocate.

In this writ petition, the petitioners pray for direction to the opposite parties to reinstate them in their respective previous posts of Medical Officer or alternatively for disposal of the representation in the light of Government Order dated 23.06.2009.

Mr. Senapati, learned Additional Govt. Advocate contends that the petitioners are over aged and this writ application is not maintainable. Their representation is also pending.

Perused the record and considering the limited prayer of the petitioners, this Court directs the opposite parties to consider and dispose of the representation of the petitioners under Annexure-7, in accordance with law as expeditiously as possible, preferably within two months from the date of receipt/production of certified copy of this order together with a copy of the writ petition which the petitioners undertake to do within two weeks.

The writ petition is disposed of.

*Urgent certified copy of this order
be granted on proper application after removal of
defects.*

Sd/- Pradip Mohanty J.

Sd/- S.K. Mishra J. x x x x x

6. The grievance of the petitioners in terms of the representation were rejected by orders dated 29.11.2010 and 09.12.2010 by the Opposite Party No.5 and 1 at Annexure-19 and 20 respectively which, are impugned herein.

7. It is submitted by the learned counsel for the petitioners that the consideration by the Authorities is ex-facie arbitrary and it is stated with vehemence that persons similarly circumstanced though were allowed to continue, the petitioners have been singled out for hostile discrimination.

8. Per contra the learned counsel for the Opposite Party No.4 and the learned counsel for the State submit that there is no material on record to support such contention of discrimination and even otherwise taking into account the nature of their engagement, petitioners had no right to continue or claim for re-engagement except in terms of the policy involved. It is further submitted that since there is no illegality or arbitrariness in exercise of power in passing the impugned Annexures-19 and 20, the Writ Petition is liable to be rejected.

9. On perusal of the impugned communication of the Government of Orissa Health and Family welfare Department at Annexure-20 and of CDMO at Annexure-19, it is seen that on an objective consideration of the claim of the petitioners for re-

engagement has been turned down, inter alia keeping in view that the very engagement of the petitioners was on contractual and subject to renewal from year to year.

Hence, this Court does not find any infirmity in rejection of petitioners claim vide Annexure-19 and 20 for re-engagement. Since, any irregularity or illegality in the decision making process, as rightly submitted by the learned counsel for the State and Opposite Party No.4, is evidenced.

10. As such the writ petition does merit consideration.

11. In the event any AYUSH doctors similarly circumstanced are continuing as claimed by the learned counsel for the petitioner, it shall be open for them to bring the same to the notice of Opposite Party No.4 within a period of six weeks from today and in such event the said Opposite Party shall consider the grievance of the petitioners independently without being influenced by the order passed by this Court.

12. The Writ Petition accordingly stands disposed of.

(V. NARASINGH)
Judge

Santoshi