

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 266 of 2019

1. Murli Chandra Kar
2. Santosh Kumar Mahto
3. Manik Chandra Barla

..... Petitioners

Versus

1. The State of Jharkhand
2. The Secretary, Department of Health, Medical Education and Family Welfare, Government of Jharkhand, Ranchi
3. The Director-in-Chief, Health, Services, Government of Jharkhand, Ranchi
4. The Mission Director (NRHM), Department of Health, Medical Education and Family Welfare, Government of Jharkhand, Ranchi
5. The Administrative Officer, Department of Health, Medical Education and Family Welfare, Government of Jharkhand, Ranchi
6. The Deputy Commissioner, East Singhbhum, Jamshedpur
7. The Civil Surgeon-cum-Chief Medical Officer, East Singhbhum, Jamshedpur
8. The District Programme Manager, East Singhbhum, Jamshedpur
9. The Establishment Deputy Commissioner, East Singhbhum, Jamshedpur
10. The District T. B. Officer, East Singhbhum, Jamshedpur
11. The District Planning Officer, East Singhbhum, Jamshedpur

..... Respondents

CORAM

HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioners: Mr. A. K. Sahani
For the Respondents: Ms. Darshan Poddar Mishra, A.A.G-I

12/20.03.2024 The present writ petition has been filed for quashing the order as contained in Ref. No. 9/RCH-631/2017-233(HSN) dated 06.12.2018 (Annexure-7 to the writ petition) issued under the signature of the respondent No.2 whereby the petitioners' claim for regularization, pursuant to the order dated 28.08.2018 passed in W.P.(S) No. 5741 of 2017 has been rejected. Further prayer has been made for issuance of direction upon the respondents to regularize the services of the petitioners against the vacant sanctioned posts on which they have been working as contractual drivers under the respondents in terms with letter No. 148 (RCH) dated 01.07.2005 issued under the signature of the respondent No.7.

2. Learned counsel for the petitioners submits that the petitioners were appointed on the post of driver on contractual basis vide letter No. 148 (RCH)

dated 01.07.2005 issued under the signature of the respondent No.7 on recommendation made by the Appointment Committee duly constituted in the light of the direction issued by the Principal Secretary, Department of Health, Medical Education and Family Welfare, Government of Jharkhand vide letter No. 19 dated 02.02.2005 and since then they have been continuously working under the concerned respondent authorities.

3. It is further submitted that the grievance of the petitioners is also similar to the contractual employees working under the Government of Jharkhand, who have been regularized after continuously working against the sanctioned vacant posts for more than 10 years and thus the cases of the petitioners for regularization may also be considered on the ground of parity.

4. Though the petitioners are getting quite poor honorarium, however, they have been working on the contractual posts in anticipation that their services will be regularized in future. They are discharging their duties with dedication and to the satisfaction of the concerned respondent authorities. Hence, their grievance may be considered as per the government norms.

5. It is also submitted that the concerned respondent authorities having taken no action for redressal of the said grievance of the petitioners, they submitted a joint representation before the respondent No.7 on 11.09.2017 and thereafter filed a writ petition being W.P.(S) No. 5741 of 2017 seeking their regularization/absorption in service, which was disposed of vide order dated 28.08.2018 directing the respondent authorities to examine the petitioners' status in accordance with law and thereafter to pass a speaking order assigning concrete and valid reason for consideration/non-consideration of their cases of regularization in services. Further, the entire exercise was directed to be completed by the respondent authorities within a period of twelve weeks from the date of receipt/production of a copy of the order dated 28.08.2018.

6. Thereafter, the petitioners filed a representation before the respondent No.2 on 29.10.2018 along with the order of this Court through Speed Post and requested to consider their grievances in terms with the said order passed by this Court. However, the respondent No.2 passed the impugned order dated 06.12.2018 as contained in Ref. No. 9/RCH-631/2017-233 (HSN) rejecting their claim for regularization in services.

7. Learned counsel for the petitioners puts much reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Narendra Kumar Tiwari & Ors. Vs. The State of Jharkhand & Ors.** reported in **(2018) 8 SCC 238** and submits that in view of the ratio laid down in the said judgment, the petitioners are entitled to be regularized as they have been rendering their services as contractual drivers for more than 10 years.

8. It is further submitted that the petitioners' claim for regularization has been rejected by referring the conditions of their contractual appointment wherein it was mentioned that no claim for permanent appointment would be entertained on the ground of discharging the duties on contractual basis, whereas various para medical workers appointed on contractual basis on similar conditions, have already been given benefit of regularization in service.

9. Per-contra, learned counsel for the respondents submits that the petitioners have been working purely on contractual basis under Jharkhand Rural Health Mission Society, which is registered under National Health Mission formerly known as National Rural Health Mission (NRHM). In the process of merger of existing State societies in the health and family welfare sector, the Reproductive and Child Health (RCH) programme was transferred to the Jharkhand Rural Health Mission Society, which has to serve in an additional managerial and technical capacity to the Department of Health, Medical Education and Family Welfare, Government of Jharkhand for implementation of the programmes launched by the National Rural Health Mission in the State.

Moreover, State Programme Management Support Unit has been formed to act as the Secretariat for providing technical support to the Jharkhand Health Mission as well as the Jharkhand Rural Health Mission Society through its Pool of Skilled Professionals and Consultants for RCH and other National Disease Control programmes.

10. As per the service conditions of the petitioners, their services are temporary which can be terminated at any time without assigning any reason and hence they are not entitled for any relief. Pursuant to the order dated 28.08.2018 passed in W.P.(S) No. 5741/2017, the petitioners' joint representation dated 29.10.2018 has been decided vide the impugned order dated 06.12.2018 as in the similarly situated case of **Sobha Rani & Ors. Vs. The State of Jharkhand & Ors. [W.P.(S) No. 3656 of 2015]**, a co-ordinate Bench of this Court has earlier passed the order dated 28.11.2016 observing that the employees working on contractual basis under the NRHM scheme cannot claim themselves to be the employees working under the Department of Health, Medical Education and Family Welfare, Government of Jharkhand and hence they cannot claim regularization.

11. Heard learned counsel for the parties and perused the relevant materials available on record. Thrust of the argument of learned counsel for the petitioners is that the petitioners have completed more than 10 years of continuous service as contract drivers under the respondents and hence they are entitled to be regularized in service. It is claimed that the petitioners were never appointed under the NHRM or NHM, which is a Central Government sponsored project, rather they were appointed under RCH Scheme, which is a State Government sponsored project and both are different agencies.

12. I have perused the impugned order dated 06.12.2018 passed by the respondent No.2 pursuant to the order of this Court passed in W.P.(S) No. 5741 of 2017 wherein the respondent No.2 has referred the earlier judgment

rendered by a co-ordinate Bench of this Court in the case of **Sobha Rani** (Supra) and has rejected the petitioners' claim for regularisation of their services.

13. I have also perused the judgment rendered in the case of **Sobha Rani** (Supra) wherein learned Bench has rejected the claim of the petitioners of that case seeking regularization in terms with Para Medical Employees (Nurses, Grade-A, ANM, Pharmacist, Lab. Technicians) Regular Appointment Rules, 2014 holding inter alia that merely because NRHM is implemented by the State Government, the employees working on contract basis under the NRHM scheme cannot claim themselves to be the employees working under the Department of Health, Medical Education and Family Welfare, Government of Jharkhand. It has also been observed in the said judgment that the agreement executed or appointment letters issued by the department for engagement of ANMs under NRHM does not lead to an inference that the contractual employees like the petitioners of the said case are working under the said department.

14. I have also perused the judgment rendered by learned Division Bench of this Court in the case of **Sunil Kumar Yadav & Ors. Vs. The State of Jharkhand & Ors. [W.P.(S) No. 315 of 2016]** wherein following issues were framed for consideration:-

- I) Whether the writ petitioners, who are working as para teachers on contract basis under a scheme, are entitled for regularization in service?
- II) Whether the petitioners-para teachers can be held entitled for pay-scale at par with the regular Assistant Teachers on the principle of 'equal pay for equal work'?
- III) Whether the writ petitioners who are working as para-teachers, in alternative, are entitled to get minimum of pay-scale?

15. In the said case, learned Division Bench decided issue No. (I) holding as under:-

“23. -----The law has already been settled in the case of Uma Devi (3). Admittedly, herein the writ petitioners have been appointed on contract basis, as would appear from their appointment letters issued in favour of one or

the other petitioners based upon the scheme known as 'Sarva Shiksha Abhiyan'.

The question of their regularization merely because they have rendered long years of service is the main ground of the writ petitioners. The writ petitioners since has accepted the terms and conditions of the appointment which is contractual in nature on the payment of fixed honorarium of Rs. 5100/- with enhancement of Rs.500 on expiry of every three years, according to considered view of this Court there cannot be any direction for their regularization for the following reasons:

(a). Admittedly, the writ petitioners have been appointed under a scheme floated by the Central Government in collaboration with State Government, financial burden of which is being borne by the Centre and State at present in the ratio of 60:40. The purpose to launch scheme is to universalize the elementary education across the country and for that purpose para teachers have been decided to be engaged on contract basis to impart education to the children in the age group of 6 to 14 years. Since the basic feature of the scheme is to universalize the elementary education under the scheme under which the writ petitioners have been appointed as para teachers and they have accepted the terms and conditions of appointment as also honorarium which they have started to receive and same is being received by them. Since the writ petitioners have been appointed on contract under a scheme and as such no legal vested right has been conferred to the writ petitioner to stake claim for regularization of their services in view of the position of law having been settled by Hon'ble Apex Court in the case of Government of Andhra Pradesh & Ors. Vs. K. Brahmanandam & Ors. (supra) that there cannot be command by the High Court in exercise of power conferred under Article 226 of the Constitution of India for issuance of direction upon the State instrumentalities for their regularization.

(b). The writ petitioners also cannot be regularized for the reason that they are not subjected to the recruitment process which is being subjected to the regular Assistant Teachers at the time of fulfilling the permanent vacancies of the cadre rather the petitioners are being appointed at Panchayat Level or Block Level by Village Education Committee and candidate is being called for the local area and as such they are not being subjected to the due recruitment process. Hence, on this ground also they cannot be regularized in service.

(c). The parameter has been fixed by the Hon'ble Apex Court in the case of Uma Devi (3) as under paragraph 53 thereof stipulating the condition of regularization and the condition that the appointment must be made against the sanctioned post but it is admitted case that the writ petitioners are not appointed against sanctioned post, rather they are the contractual engagee under a scheme. Once an appointee is appointed under a scheme there is no question of considering them to be appointed against the sanctioned post and thereby they are not fulfilling the criteria fixed by Hon'ble Apex Court in the case of Uma Devi (3) (supra). Further reason is that there is non-observance of mandate of Article 16 of the Constitution of India since there is no wide inviting applications to all concerned who are eligible to be considered and if ignoring such candidates the services of the writ petitioners will be regularized the other candidates will be subjected to discrimination and a fair chance to participate in the process of selection. The scheme (SSA) since is under joint collaboration of Centre and State and financial burden is being borne to the extent of 60:40 and in that view of the matter also there cannot be direction by the High Court sitting under Article 226 of the Constitution of India for their regularization of their services on the ground of financial constraint as taken by the State.

In this regard, the judgment rendered by Hon'ble Apex Court in State of Uttar Pradesh & Another vs. Anand Kumar Yadav & Ors. [(2018) 13 SCC 560] is required to be referred wherein the issue fell for consideration seeking regularization of teachers who are being appointed under SSA has been negated and the version of the High Court has also been affirmed by the Hon'ble Supreme Court, relevant paragraph of which is quoted as under:

"29. Further difficulty which stares one in the face is the law laid down by this Court on regularisation of contractually 364 appointed persons in public employment. Appointment of Shiksha Mitras was not only contractual, it was not as per qualification prescribed for a teacher nor on designation of teacher nor in pay scale of teachers. Thus, they could not be regularised as teachers. Regularisation could only be of mere irregularity. The exceptions carved out by this Court do not apply to the case of the present nature."

This Court on the basis of the aforesaid reasoning coupled with the judicial pronouncements, as referred above, is of the view that the writ petitioners are not entitled for regularization in service."

16. Further, in the case of **Anil Ram & Ors. Vs. The State of Jharkhand & Ors. (W.P.S No. 4846 of 2022)**, learned Division Bench of this Court also rejected the claim of regularization of the petitioners of that case, who were appointed as para teachers by referring the judgment rendered in the case of **Sunil Kumar Yadav (Supra)**.

17. I have also perused the judgment rendered by learned Division Bench of this Court in the case of **Nazir Ahmad & Ors. Vs. The State of Jharkhand & Ors. (L.P.A No. 858 of 2019)** wherein it has been held as under:-

“27. The undisputed fact in this case is that the writ petitioners were appointed sometime in the year 1997 by the erstwhile State of Bihar after issuing the advertisement on contract basis. The writ petitioners have continued and after coming into effect the Bihar Reorganisation Act, 2000 they have been inducted in the services of the State of Jharkhand and the State of Jharkhand has taken a decision to continue to engage them for rendering their services under a project known as Sarva Shiksha Abhiyan. They are working under the establishment wing as also in a field officer. The advertisement explicitly clarifies the nature of appointment of the writ petitioner i.e. on contract basis. The fact of the nature of appointment on contract is also not in dispute, since, the appointment is based upon the terms and conditions of a memorandum of understanding and when there is a memorandum of understanding the appointment will be construed to be and will be an appointment on contract basis.

28. The writ petitioners have been allowed to continue on contract basis bases upon the continuation in service they have raised their grievance for their regularisation. The grievance having not been redressed by the J.E.P.C. and the State, they have come to this Court by filing a series of writ petitions. The learned Single Judge has dismissed those writ petitions by an impugned order in consequence upon the same the present appeal has been filed.

29. The issue of regularisation has elaborately been dealt with in the case of Secretary, State of Karnatak and Ors. Vs. Uma Devi(3) and Ors. (Supra) the State of Bihar Vs. Bihar Secondary Teachers Struggle Committee (Supra) wherein although the issue was not of the contractual engage, rather, the issue was of daily wagers.

30. The Hon'ble Apex Court while laying down the law has laid down a proposition for putting a restraint upon the backdoor entry, however, by way of one time exercise the engagee who had already been appointed on daily wagers have been directly to be regularise as would appear from paragraph 53 of the judgement, as rendered by the Hon'ble Apex Court in Uma Devi (Supra).

31. Here the case is not of the daily wagers; rather, the appointees are on contract under a scheme. The question of regularisation under a scheme cannot be said to be proper for the reason that when scheme is not under the regular establishment of the State Government, then where is the question of inducting the employees working under a scheme for their regularisation. The question of regularisation can only be considered if the engagees are working directly under the State Government in that way of the matter, the claim can be made for their regularisation if the law so permits.

32. Here, the appointment is based upon the memorandum depending upon certain terms and conditions wherein there is no reflection in the terms and conditions that their services will be regularised merely on the ground that they have been allowed to continue fairly for a long period. The moment the memorandum of understanding has been signed in between the engagee and the employer, i.e. J.E.P.C., and the law is well settled that if an engagement is being made on contract basis the terms and conditions as enshrined in the agreement of the memorandum of understanding will bind parties.

33. This Court, therefore, is of the view that merely because the writ petitioners have been allowed to continue in service fairly for a long period that does not confer any legal vested right to claim regularisation by asking a direction from the High Court in exercise of power conferred under Article 226 of the Constitution of India. The law is well settled that the writ Court in exercise of the power under Article 226 of the Constitution of India cannot issue a mandamus for regularisation. The reference in this regard may be made to the judgement rendered in the case of Secretary, State of Karnatak and Ors. Vs. Uma Devi (3) and Ors. (Supra) the State of Bihar Vs. Bihar Secondary Teachers Struggle Committee (Supra)."

18. Thus, the issue that a person who has been appointed purely on contractual basis under a scheme of the government, is not entitled to be

regularized in service even after continuous service of more than 10 years, is no more res-integra.

19. It is the admitted case of the petitioners that they were appointed on the post of driver purely on contractual basis under the RCH Scheme and not directly by the State Government. Thus, in view of the well settled principle of law as laid down in the aforesaid judgments, the petitioners are not entitled to be regularized in service on mere ground that they have continued in service for more than 10 years.

20. Learned counsel for the petitioners puts much reliance on the judgment of the Hon'ble Supreme Court rendered in the case of **Narendra Kumar Tiwari** (Supra). I have perused the said judgment wherein the appellants were the irregularly appointed employees of the State Government and were seeking regularisation of their status on the ground that they had rendered more than 10 years of service. The High Court did not grant relief to the appellants relying on the judgment rendered by the Hon'ble Supreme Court in the case of **State of Karnataka Vs. Umadevi (3)** reported in **(2006) 4 SCC 1** as well as the regularisation rule of the State Government since they had not worked for 10 years on the cut-off date i.e. 10-4-2006. The matter having travelled to the Hon'ble Supreme Court, Their Lordships held as under:-

'7. The purpose and intent of the decision in *Umadevi (3)* was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in *Umadevi (3)* is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what *Umadevi (3)* and *State of Karnataka v. M.L. Kesari*, (2010) 9 SCC 247] sought to avoid.

8. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in *Umadevi (3)*, is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15-11-2000 and the cut-off date was fixed as 10-4-2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench.

9. The High Court as well as the State of Jharkhand ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise — the interest of the employees is also required to be kept in mind. What has eventually been achieved by the State of Jharkhand is to short circuit the process of regular appointments and instead make appointments on an irregular basis. This is hardly good governance.

10. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct, etc.”

21. The facts and circumstances of the present case are different from those mentioned in the aforesaid judgment as in the present case, the petitioners are not under the direct employment of the State Government, rather they have been appointed under the RCH Scheme and have been working under the Jharkhand Rural Health Mission Society, which is providing technical support to the Department of Health, Medical Education and Family Welfare, Government of Jharkhand for implementation of the schemes launched by National Health Mission. Thus, this Court is of the considered view that the ratio laid down in **Narendra Kumar Tiwari** (Supra) will not be applicable in the case of the petitioners.

22. In view of the aforesaid discussions, I find no merit in the present writ petition and the same is accordingly dismissed.

