

B.P.DAS, J & B.K.NAYAK, J.

W.P.(C) NO. 30948 OF 2011 (Dt.24.02.2012)

DR. DEBI PRASAD ACHARYA

.....Petitioner

.Vrs.

STATE OF ORISSA & ORS.

... ..Opp.Parties

For Petitioner - M/s. B.R.Sarangi & S.N.Jena.
For O.Ps. 1 & 2 - Mr. J.P.Pattnaik,
Addl. Govt. Advocate.
For O.Ps. 3 to 7 - M/s. P.K.Mohanty, D.N.Mohapatra,
J.Mohanty, R.K.Nayak & S.N.Dash.

B.P.DAS, J. The petitioner, who is working as a Homoeopathic Medical Officer under the Cuttack Municipal Corporation (C.M.C.), has filed this writ petition on the allegation that the Corporation authorities are not allowing him to discharge his duty as a Medical Officer at Homoeopathic Dispensary, Deulasahi, Cuttack, though he has been appointed under the provisions of the Local Fund Service Rules, 1975 by the State Government and his service has been regularized with effect from 31.12.1994 and allowed to draw regular scale of pay with effect from 1.6.1998 in pursuance of the order dated 28.1.2004 passed by the Director, Municipal Administration-cum-Ex-Officio Additional Secretary to Government, Housing & Urban Development Department.

It is also averred that on account of larger public interest, it was resolved by the C.M.C. in its resolution dated 31.12.1994 to create a post of Homoeopathy Medical Officer in the scale of pay of Rs.1640-3500/- by getting Government approval. In pursuance of such resolution, the C.M.C. allowed the petitioner to work as Homoeopathic Doctor on daily wage basis @ Rs.40/- per day for a period of 44 days and the petitioner accepted the same. Ultimately, a post was created by virtue of the resolution of the C.M.C. dated 17.4.1996 and vide office order dated 1.6.1998, the petitioner was appointed as Homoeopathic Medical Officer on ad hoc basis in the time scale of pay of Rs.1640-2900/- with usual D.A. and other allowance and posted as such at Deula Sahi, Cuttack in a rented house. Ultimately, by order dated 28.1.2004, sanction was accorded by the Government under Section 73(1) of the Orissa Municipal Corporation Act to the creation/function of the temporary posts included in the Local Fund Service Cadre wherein the petitioner's service has been regularized from 1.6.1998 to 31.5.2004. Accordingly, order of regularisation was passed on 27.5.2004.

It is pertinent to mention here that sanction was for the period from 1.6.1998 to 31.5.2004. Thereafter, on 12.7.2004 (Annexure-11), the Additional Executive Officer, C.M.C., wrote a letter for extension of sanction order because creation of post made on 28.1.2004 from 1.6.1998 to 31.5.2004 has already been over. But according to Mr.Mohanty for the C.M.C., the petitioner was allowed to continue in the post till December, 2004 but thereafter, he was not allowed to work due to want of sanction order from the Government beyond 31.5.2004 and for closure of Deula Sahi

Homoeopathy Dispensary. The petitioner has filed several representations but the same were of no use, for which the petitioner filed the present writ petition.

2. Counter affidavit has been filed on behalf of the C.M.C. in W.P.(C) No.12109/2006, which has been filed by the present petitioner for separate cause of action, and the same be adopted in the present proceeding, as stated by the learned counsel for the C.M.C. In the counter affidavit, the C.M.C. has taken a stand that since there is no order of sanction beyond 31.5.2004 even though several correspondences were made with the State Government, more specifically Annexure-16, i.e., communication dated 4.2.2006, there is no justification for the petitioner to continue. That apart, they have closed the Homoeopathy Dispensary.

3. In course of hearing, Mr.Sarangi, learned counsel for the petitioner, draws our attention to Annexures-21 & 22. Annexure-21 is the communication dated 9.1.2009 from the Deputy Secretary to Government, Housing & Urban Development Department to the Municipal Commissioner, C.M.C., in which the State Government has blamed the C.M.C. that there was gross negligence on their part in handling the matter, for which the petitioner could not be continued in the post of Homoeopathic Medical Officer. Annexure-22 is another communication dated 17.6.2009 from the State Government to the Municipal Commissioner, C.M.C., relevant portion of which reads as follows :-

“As it is revealed from the official records, continuance of temporary posts under L.P.S. Cadre of C.M.C. has not been sanctioned by Govt. since long, but in no occasion discontinuance of service of any employee of that cadre for the said reason has been reported to this Department. This shows discrepancy on the part of C.M.C. to Dr.Debi Prasad Acharya, HMO, who has been debarred from Municipal Service since 2005. This position has dragged Govt. into unnecessary legal complications.

You are, therefore, requested to kindly look into this matter personally and send a line of reply to this Deptt. explaining the actual position.”

Basing upon the communication in Annexure-22, Mr. Sarangi, learned counsel for the petitioner, advances an argument that the Government is right in saying that there were several other employees, in whose cases, sanction has been extended but for the reasons best known to the authorities, the case of the petitioner was not considered.

4. During course of hearing, we directed the Secretary, Housing and Urban Development Department, to file counter affidavit. The Secretary filed his counter affidavit on 23rd February, 2012, relevant paragraphs-3, 10 & 12 of which are quoted herein below :-

“3.That with regard to the averments made in Para-1 of the writ application, it is humbly submitted that Govt. in H & U.D.Department Order No.2056/HUD, dt.28.1.2004 had accorded sanction to the creation of the post of HMO in CMC for the period from 1.6.1998 to 31.5.2004 and in Sl.No.5 of the said order under Annexure-8 to the writ petition, it is clearly mentioned that on the recommendation of council resolution No.1, dtd.17.4.1996 of Cuttack Municipal Corporation, the petitioner Sri Debi Prasad Acharya is appointed as HMO in CMC on regular basis as per the following terms & conditions :

- a) Dr.Acharya may be appointed in the post on regular basis & his services may be counted from the date he has joined as DLR for pensionary benefit only.
- b) The period of absence from duties by Dr.Acharya from the post due to the legal order of Executive Officer, CMC may be condoned.
- c) The pay etc. of Dr.Acharya will be paid as HMO from the date he actually joins on regular basis without any retrospective/notional financial benefit.
- d) The pay, etc. of this post of Homoeopathic Doctor will be borne by the CMC without any burden to Govt.

After issue of G.O.No.2056/HUD, dt.28.1.2004, the CMC had issued the appointment letter in their order No.4599, dt.27.5.2004 to Dr. Acharya to join as HMO. As per CMC order dtd.27.5.2004, Dr.Acharya has submitted his joining report on 29.5.2004 F.N. Hence Dr.Acharya is eligible to get his regular scale of pay from the date he actually joined in CMC i.e. 29.5.2004.

10. That with regard to the averments made in paragraphs 19 to 21 of writ application, it is humbly submitted that the proposal of continuance of the post of HMO submitted by CMC is under active consideration and the same is under process.

12. That with regard to the averments made in paragraph-34 of writ application, it is humbly submitted that after receipt of letter dtd.30.12.2010 under Annexure-26 of writ application, the Municipal Commissioner CMC vide H & U.D.Deptt., letter dt.2.12.2011 was requested to furnish clarification which has been received on 21.2.2012 from Cuttack Municipal Corporation. It is worthwhile to reiterate that decision on the proposal submitted by CMC is under process."

5. Today Mr.PK.Mohanty, learned counsel for the C.M.C., filed a memo enclosing a copy of letter dated 2.2.2012 issued to the Deputy Secretary to Govt., Housing & Urban Development Department, by the Municipal Commissioner, C.M.C., paragraph-2 of which is quoted herein below :-

"2. As regards sanction of post of the Homoeopathy Medical Officer (HMO), it may be mentioned here that Government have already given approval for this post for the period up to 31.5.2004 and since thereafter was no approval thereafter, the Homoeopathy Medical Officer posted there was not engaged. Hence, no continuance proposal as well as proposal for a formal approval could be given for the operation of the hospital. Now keeping in view the proposal for operating the hospital with immediate effect as mentioned above, the post of Homoeopathy Medical Officer also may be sanctioned which was created earlier as a matter of continuance so that Sri Debi Prasad Acharya who was engaged as the Homoeopathy Medical Officer earlier would be re-engaged early and the hospital would be made functional."

6. In view of the affidavit of the Secretary, Housing & Urban Development Department, and the letter dated 2.2.2012 issued to the Government by the

C.M.C. and the proposal submitted in Annexure-16, vide letter dated 4.2.2006, it is clear that the petitioner was appointed as Homoeopathy Medical Officer on regular basis on certain terms and conditions and continuance of the said post, as submitted by the C.M.C., is under active consideration and under process. So the intention of the Government is crystal clear that the post of Homoeopathy Medical Officer shall continue and from the letter dated 2.2.2012, which is filed by the C.M.C. today in Court, it is also clear that the C.M.C. is desirous of running the Homoeopathic Dispensary at Deula Sahi, Cuttack and this Court is of the view that the larger public interest would be served best if Homoeopathic medical facilities, which had been extended in the year 1994, are not be closed. Keeping in view the rapid growth of population in Cuttack City, more medical dispensaries and hospitals are necessary in order to cater to the needs of the people, who depend upon Homoeopathic medicine. When there is need for opening more number of Homoeopathic dispensaries, it will not be wise to close one, which has been opened. The view of the Government is also to run the dispensary.

7. In such view of the matter, we dispose of this writ petition with the following declarations and directions :-

I) The post of Homoeopathic Medical Officer, in which the petitioner was working, is a regular post.

II) There would not be any permission to discontinue the same on the plea that it lacks Government sanction.

III) As the proposal for sanction is under active consideration of the State Government, the State Government shall take a decision on the same within a period of one month from today.

IV) Let the hospital be opened within one month from today.

V) Let the salary of the petitioner for the period, for which he has not worked, be computed and looking at the budgetary provision and financial condition of the C.M.C., 50% of the same be paid to the petitioner, which shall be borne by C.M.C., within two months from today.

VI) Adequate medicines shall be supplied to the Homoeopathic Dispensary at Deula Sahi, Cuttack. If there is any constraint in getting private accommodation for opening of the dispensary, it will be open to the C.M.C. to find out an undisputed shop room under the jurisdiction of C.D.A. in the vicinity of Deula Sahi.

Writ petition disposed of.