



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7807 OF 2021

Bargaje Ashok Shivajirao & Ors. ...Petitioners

Versus

The State of Maharashtra & Ors. ...Respondents

Mr. Sangram Chinnappa, for the Petitioners.
Mr. B. V. Samant, AGP for the State.

**CORAM : DHIRAJ SINGH THAKUR AND
SANDEEP V. MARNE, JJ.**

DATE : 17th JULY, 2023.

P.C.:

The Petitioners are working on contractual basis as Doctors under the National Health Mission (NHM). Some of the Petitioners have been engaged on an yearly basis with extensions granted from time to time since 2008. The Petitioners are getting paid a contractual sum ranging from Rs. 25,000/- to Rs. 30,000/- per month.

The grievance of the Petitioners is that for the first time in the year 2021, by virtue of circular dated 12th April, 2021 issued by the

Director Health Services, National Health Mission, the Doctors appointed on contractual basis have been prohibited from doing any other work including private practice, which is now incorporated in the agreement executed between the Petitioners and the employer.

2. Learned Counsel for the Petitioners states that although the Petitioners are working on extensions granted from time to time, the Petitioners had signed their contractual agreement on 'without prejudice basis'.

It was urged that the clause inserted regarding prohibition on private practice was incorporated in the year 2021 for the first time. It is stated that a similar prohibition was also imposed upon Doctors working in the Government sector, which came under challenge by way of Writ Petition No. 7760 of 2022.

It is stated that in the aforementioned petition the Government Resolution dated 07th August, 2012 specifically stated that any Doctor who received a non-practicing allowance would be prohibited from indulging in private practice. The aforementioned Government Resolution came to be challenged in the aforementioned writ petition and was stayed in regard to clauses

no. 4.1, 4.3, 4.4, 4.5 and 4.7 contained therein.

3. It was thus urged by learned Counsel for the Petitioners that if Doctors in the Government sector enjoying much higher pay scales, who were similarly sought to be prohibited from indulging in private practice have no such bar in view of the order passed by this Court, then the insistence on the part of the National Health Mission to prevent the Doctors working on contractual basis on a paltry sum of Rs.25,000/- to Rs.30,000/- would be highly iniquitous. The fact that there is an order passed on 08th July, 2022 by this Court in Writ Petition No. 7760 of 2022 which has not been vacated, is not denied by learned Counsel for the Petitioners.

4. In our opinion the Petitioners who were earlier engaged on contractual basis as early as from the year 2008 and onwards are working on a very meagre amount of Rs.25,000/- to Rs.30,000/- per month and, therefore, to impose such a condition beyond their working hours which is fixed from 9:45 a.m. till 5:30 p.m. would in our opinion be harsh. It is also not denied that the Petitioners are not being paid any non-practicing allowance as Doctors in the Government set-up. Notwithstanding the above, while it may be permissible for the employer to ensure that the Petitioners are

made to work during the working hours from 9:45 a.m. to 5:30 p.m. everyday yet to prevent them from utilizing their time beyond 5:30 p.m. on a general allegation that the Doctors were remaining away from their duties and were indulging in private practice in our opinion would be not justified. Nothing would take away, from the Respondents their right to take strict action including termination of the contractual arrangement with the Petitioners, in case it was found for any reason that a particular Petitioner had not been reporting for duty during the duty hours.

Be that as it may, we find *prima faice* case in favour of the Petitioners. The impugned Circular to the extent it prevents the Petitioners from having their private practice is accordingly stayed.

5. List on 28th August, 2023, for final consideration.

(SANDEEP V. MARNE, J.)

(DHIRAJ SINGH THAKUR, J.)