



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.12764 of 2024

Dr. Rakesh Kumar Ludam &
Anr.

Petitioner(s)

Mr. Avijit Mishra, Adv.

-versus-

State of Odisha & Ors.

Opposite Party (s)

Mr. Sonak Mishra, ASC

Mr. Manoj Ku. Mohanty, Adv.
for O.P.5

CORAM:

DR. JUSTICE S.K. PANIGRAHI

Order

No.

12.

ORDER

22.11.2024

1. This matter is taken up through hybrid arrangement.
2. During the course of the hearing, learned counsel for the Petitioners, through a memorandum filed before this Court, submitted that Petitioner No.2 does not wish to pursue this Writ Petition. Accordingly, permission is sought to allow Petitioner No.2 to withdraw from the proceedings.
3. In view of the above submission, this Court permits Petitioner No.2 to withdraw from this Writ Petition. The memorandum filed today in Court shall be placed on record.
4. I have heard the learned counsel for the parties.
5. In this Writ Petition, Petitioner No.1, a Medical Practitioner who is serving as Assistant Professor in the Department of

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Anesthesiology on contractual basis, has challenged the advertisement issued under Order No.4972/Estt./ MKCG dated 08.05.2024 by Opposite Party No.4, the Dean and Principal of MKCG Medical College and Hospital, Berhampur, for filling the post of Assistant Professor in the Department of Anesthesiology; a position currently held by the petitioner on deputation.

6. Learned counsel for the petitioners submitted that Petitioner No.1 was selected by the Odisha Public Service Commission ("OPSC") and appointed as Assistant Surgeon/Medical Officer under the DHS cadre within the Health and Family Welfare Department, Government of Odisha. Subsequently, following a selection process, he was deputed to the post of Assistant Professor in the Department of Anesthesiology at MKCG Medical College and Hospital, Berhampur, pursuant to Order No.MET-II-53/19-13 dated 01.01.2020 issued by DMET, Odisha.
7. It was further submitted that the Government of Odisha, vide Letter No.6547/H dated 04.03.2017, communicated the modalities for appointing Assistant Professors in new government medical colleges, which could now be filled up on a contractual or deputation basis. Clause 10 of the said modalities provides that in-service OMHS cadre doctors selected for such regular Assistant Professor posts would continue in their positions until the posts are filled on a regular basis.
8. Subsequently, the Government of Odisha issued Resolution No.5202 dated 26.02.2019, prescribing guidelines for engaging

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Assistant Professors, Associate Professors, and Professors in government medical and dental colleges on a contractual basis.

9. Now, as per Clause 10 of the Government's letter dated 04.03.2017, a doctor appointed as an Assistant Professor on deputation against a regular post would be reverted to their parent cadre once the position is filled up through regular appointment. However, the Resolution No.5202 dated 26.02.2019 does not specify a tenure for contractual or deputation appointments. It is evident from these documents that Petitioner No.1 is entitled to continue in the said post, pursuant to the order dated 01.01.2020, until the post is filled through a regular selection process.
10. The petitioner contended that while serving as Assistant Professor on deputation at MKCG Medical College, Opposite Party No.4 issued an advertisement dated 08.05.2024 to fill up his post on a contractual or deputation basis. Although the advertisement listed three vacancies, four were shown during counseling, despite only two of the eleven sanctioned posts being genuinely vacant. The petitioner argues that as per the letter dated 04.03.2017; he is entitled to continue in his post until it is filled through a regular appointment. Thus, the petitioner asserts that the move to replace him is legally untenable.
11. However, the Opposite Party No.4, in its counter-affidavit, asserts that the Petitioner No.1, belonging to the DHS/OMHS cadre, was appointed to meet NMC staffing requirements. His deputation as

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Assistant Professor began on 31.01.2020 and ended on 30.01.2024. The DMET, Odisha, initially directed relieving deputed Assistant Professors completing 4-year tenures (Letter No.3842 dated 06.03.2023) but kept the order in abeyance (Letter No.4192 dated 13.03.2023) due to impending NMC inspections.

12. It is clarified that the provisional vacancy list was prepared, reflecting anticipated vacancies and aiming to provide opportunities to fresh candidates after securing NMC recognition.
13. It is further stated that deputed/contractual Assistant Professors with completed 4-year tenures are eligible for promotion to Associate Professor roles in other medical colleges under the 25.04.2022 Government Resolution. The Petitioner No.1 may apply for the position of Associate Professor in other colleges.
14. The DMET, Odisha, vide instruction No.3842 dated 06.03.2023, directed all Deans and Principals to relieve Assistant Professors serving on contractual or deputation basis who have completed their four-year tenure. Consequently, the provisional vacancy list was published to provide opportunities for fresh candidates. The advertisement clarified that such appointments are stop-gap arrangements until regular recruitment is undertaken by the OPSC, granting the department significant discretion in appointments and terminations.
15. It is submitted that there is no question of termination, as these individuals belong to the OMHS cadre and will revert to their

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parent cadre. However, by not applying for vacant Associate Professor posts, they block Assistant Professor positions, preventing fresh recruits from entering government service while avoiding transfers to other medical colleges. Accordingly, this Writ Petition is devoid of merit and liable to dismissal.

16. This Court, in its order dated 20.05.2024, directed that the selection process may proceed, but the posts currently occupied by the Petitioner No.1 shall not be filled without permission of this Court.
17. Now, upon hearing the learned counsel for both parties, it is undisputed that the Petitioner No.1 was appointed as Assistant Professor at MKCG Medical College on deputation basis through a DMET-conducted interview to fulfill NMC-mandated teaching staff requirements. His appointment, being contractual and temporary, was liable to termination as per its terms. The matter of his replacement is immaterial and extraneous to the issue at hand.
18. This Court finds merit in the argument of the Opposite Party No.4 that the Petitioner No.1's return to his parent cadre does not constitute termination. Furthermore, the Petitioner No.1 has not applied for vacant Associate Professor posts in other Government Colleges, blocking opportunities for fresh candidates and hindering compliance with NMC requirements.
19. The key issue is whether the State has the legal authority to advertise the Petitioner No.1's post for fresh recruitment and,

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consequently, terminate his services. This Court concludes that an employer's right to terminate an employee's service in accordance with the terms of the contract is well-established. The nature of tenure—permanent or temporary—does not diminish the employer's authority to act within contractual bounds.

20. This Court finds no evidence of discriminatory practices or a breach of Article 16 of the Constitution. Even if specific successors were predetermined, Article 16 would not apply. The Petitioner No.1's claim that he cannot be replaced by another contractual employee is unsustainable, as he is on a deputation from the DHS/OMHS cadre. His appointment was temporary, to meet NMC requirements, and his deputation concluded on 30.01.2024. The Petitioner No.1 is not being terminated but he is sought to be repatriated to his parent cadre.
21. In service jurisprudence, it is a well-established principle that a contractual employee cannot be terminated solely to appoint another contractual employee. However, this principle does not apply in the present case, as the petitioner was not terminated but sought to be repatriated to his parent cadre upon the conclusion of his deputation on 30.01.2024. The Petitioner No.1's engagement was temporary, aligned with NMC requirements, and explicitly subject to the terms of deputation. With the end of his tenure, the Petitioner No.1 retains the opportunity to apply for the higher post of Associate Professor in accordance with applicable

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guidelines, ensuring no violation of service principles of jurisprudence.

22. This Court underscores that the persistent practice of appointing contractual employees to positions such as Assistant Professor in medical institutions is unsustainable. These posts must be filled through regular appointments to ensure the integrity and stability of the academic and medical framework. The Government is directed to ensure that the OPSC initiates the recruitment process as expeditiously as possible for filling these positions with regular appointees, thereby addressing the prevailing culture of complacency and ad-hoc arrangements in public service.
23. In view of the above, this Court does not find any merit in the argument of the Petitioner No.1 and is not inclined to accede to the prayer of the Petitioner No.1. Accordingly, this Writ Petition is dismissed.
24. Interim order passed earlier stands vacated.

(Dr. S.K. Panigrahi)
Judge

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