

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 750/2015 (S.B.)

Gopal S/o Maroti Warkade,
Attendant, General Hospital,
Aged 34 years, At & Pot Ekodi,
District Gondia.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
- 2) The Civil Surgeon,
K.T.S. General Hospital,
District Gondia.
- 3) Dr. Manisha Yede,
Medical Officer,
Nagri Arogya Suvida Kendra,
Bhim Nagar, Gondia.

Respondents.

Shri Bharat Kulkarni, Advocate for the applicant.

Shri P.N. Warjurkar, P.O. for respondent nos. 1&2.

none for respondent no.3.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

JUDGMENT

(Delivered on this 15th day of April,2019)

Heard Shri Bharat Kulkarni, learned counsel for the applicant and Shri P.N. Warjurkar, learned P.O. for respondent nos.1&2. None for respondent no.3.

2. It is case of the applicant that he was duly selected after advertisement and after following recruitment process, he was appointed on the post of Attendant vide order dated 08/11/2012. The applicant was continued in service and he received the salary till 31 March,2015. It is submitted that the applicant was appointed after following the recruitment process on a vacant post. The respondents thereafter stopped to pay the salary to the applicant though the applicant rendered service in the office of respondent no.2. In this background, the applicant is claiming that he be regularised on the post of Attendant and direction be given to the respondent no.2 to pay the wages of the applicant from 01/04/2015 onwards.

3. The application is resisted by the respondents vide reply which is at page no.24. It was contended by the respondent no.2 that the applicant was never appointed in service after following the recruitment rules, but the applicant was engaged to discharge the work on contract, on day to day basis. It is submitted that in pursuance of the direction issued by the Deputy Director of Health Services, Nagpur, decision was taken to utilize service of the Attendants provided by the Private Contractor. It is contention of the

respondents that the Department entered into contract with the Snehal Sushikshit Berojgar Sewa Sahakari Sanstha Maryadit, Tumsar, which agreed to supply the worker for cleanliness and security services to the Hospital. It is contention that the applicant was on payroll of Snehal Sushikshit Berojgar Sewa Sahakari Sanstha Maryadit, Tumsar and he rendered his services for which the respondents have paid to Snehal Sushikshit Berojgar Sewa Sahakari Sanstha Maryadit, Tumsar. It is submitted that it was responsibility of Snehal Sushikshit Berojgar Sewa Sahakari Sanstha to pay the wages of the applicant and as there is no contract between the applicant and the respondents, therefore, there is no substance in the present application. It is contention of the respondents that it is settled law that no one can be appointed in Government service disregarding the recruitment rules. The applicant was never appointed following the recruitment rules by the Competent Authority, therefore, question of regularisation of the services of the applicant does not arise. In view of this, the respondents have contended that the O.A. is without merit and it is liable to be dismissed.

4. I have heard oral submissions on behalf of the applicant and on behalf of the respondents. The first submission of the applicant that he was appointed in service by the Competent Authority after following the recruitment rules is concerned, I would like to point

out that the first appointment order dated 08/11/2012 (Annex-A-1) is very much clear. It is specifically mentioned in the order that the applicant was appointed on purely contract basis and his services would be terminated at any time. The second order dated 28/05/2013 is also same. After perusing these orders, it is difficult to accept that the applicant was appointed in service of the respondents after following the recruitment rules. The legal position is settled that no person can be regularised in service unless he was appointed in service by the Competent Authority after following the recruitment rules. In the present case as the applicant was not appointed after following recruitment rules, therefore, the applicant is not entitled for the relief of regularisation in service.

5. So far as claim of the applicant for salary since 01/04/2015 onwards is concerned, the respondents have specifically submitted that policy decision was taken by the department to use the services of outsourcing agency Snehal Sushikshit Berojgar Sewa Sahakari Sanstha. It is specifically submitted that the applicant was on payroll of Snehal Sushikshit Berojgar Sewa Sahakari Sanstha and he was deputed by that Sahakari Sanstha to render his services to the respondents. It is submitted that the respondents have paid the amount to the Snehal Sushikshit Berojgar Sewa Sahakari Sanstha as per the contract and it was responsibility of that Sahakari Sanstha to

pay the wages of the applicant. It is submission of the learned P.O. that the Attendance Book was maintained only for noting down on which dates the applicant performed work and it was for the Snehal Sushikshit Berojgar Sewa Sahakari Sanstha to pay the wages as per the agreement between the applicant and the Snehal Sushikshit Berojgar Sewa Sahakari Sanstha. The learned P.O. has invited my attention to the rejoinder submitted by the applicant which is at page no.32. On page no.33 of the rejoinder, it is contended by the applicant that the applicant was appointed by the Civil Surgeon, Gondia with due process of law and the applicant received the salary till 31/03/2015. The salary was credited in bank account of the applicant. In para-4 of the rejoinder, it is specifically mentioned that the continuation order after 31/03/2015 was not issued to the applicant. This means that till end of March,2015 the applicant was rendering service as contractual daily wages employee, he was not in service of the respondent no.2 and after 31/03/2015 the respondent no.2 never issued any order to the applicant to render any service to the Hospital. In para-7 of the rejoinder it is contended that :

"In response to reply of para-8 it is submitted that the applicant is not appointed by the Contractor and the letter dated 28/12/2015 is misleading to avoid the action to R.no.2 for personally appearance before the Court. This letter is managed in the Chamber of R.No.2 at

the time the applicant was present and he was forced to accept the payment through the Contractor.”

6. After reading the above paragraph inference is to be drawn that the applicant had received his wages through the Contractor. It must be taken into consideration that in O.A. there was no whisper that the applicant was forced to receive the wages from the Contractor. The learned P.O. has invited my attention to letter dated 28/12/2015. This letter was issued by the President, Snehal Sushikshit Berojgar Sewa Sahakari Sanstha Maryadit, Tumsar. It was certified that Shri Gopal Warkade resident of Gondia was in service of the Sahakari Sanstha since April,2015 and he was doing work at K.T.S. Hospital, Gondia on contract. The fact stated in para-7 corroborates the case of the respondents that Snehal Sushikshit Berojgar Sewa Sahakari Sanstha was supplying the daily wages workers for maintenance of the Hospital. The respondents have also placed on record the copy of the contract between the respondent no.2 and Sahakari Sanstha. The respondent no.2 has also placed on record the details of various amounts which were credited in account of Snehal Sushikshit Berojgar Sewa Sahakari Sanstha, Tumsar. The Sahakari Sanstha has also issued letter dated 26/03/2019 and informed that the Sahakari Sanstha entered into contract with the respondent no.2 from 03/01/2014 to 30/09/2016 and at the relevant

time the applicant Shri Gopal Warkade was on pay roll of Snehal Sushikshit Berojgar Sewa Sahakari Sanstha. The respondent no.2 has also placed on record the copy of the bill submitted in Treasury, it is dated 20/04/2016. The bill is regarding payment Rs.87,372/- to Snehal Sushikshit Berojgar Sewa Sahakari Sanstha. The document at page no.89 is the letter addressed to respondent no.2 by the Snehal Sushikshit Berojgar Sewa Sahakari Sanstha, in which it is mentioned that for rendering services from 5/11/2014 to 4/11/2015 amount Rs.87,372/- was received in the month of May,2015. Therefore only on the basis of the attendance register inference cannot be drawn that the applicant was appointed in service by the respondent no.2. In view of these facts there appears substance in the contention of the respondents that only for the purposes for noting down the presence of the workers who rendered the services on contract the attendance roll was maintained by the Hospital. The copy of the bill dated 20/04/2016 for Rs.85,625/- to Snehal Sushikshit Berojgar Sewa Sahakari Sanstha is placed on record and this document also supports the case of the respondents that the Snehal Sushikshit Berojgar Sewa Sahakari Sanstha was outsourcing agency to provide workers for cleaning and maintaining the Hospital and the applicant was engaged by Snehal Sushikshit Berojgar Sewa Sahakari Sanstha Tumsar.

7. In view of this discussion, I am compelled to say that there was no relationship of employer and employee between the applicant and the respondent no.2 and after 31/03/2015 the applicant was never called upon by the respondent no.2 to discharge any work in the Hospital and whatever work was done by the applicant was done in the capacity of the worker provided by the outsourcing agency Snehal Sushikshit Berojgar Sewa Sahakari Sanstha Tumsar. In view of this discussion, I hold that there is no substance in this application. Hence, the following order :-

ORDER

The O.A. stands dismissed with no order as to costs.

Dated :- 15/04/2019.

(A.D. Karanjkar)
Member (J).

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