

**IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)**

ITANAGAR PERMANENT BENCH

WP(C)520(AP)2015

Shri Kago Kunya
Aged about 54 years
Son of Kago Nana
Presently residing at R. K. Mission Hospital Complex
Itanagar, Papum Pare District, Arunachal Pradesh.
[Mob. No. 09436058266]

.....Petitioner

By Advocates:

Nikita Danggen
O. Duggong
A. Panor
P. Sangeeta
O. Perme
T. Tatak
B. Gadi
D. Taggu
J. Lomi

-Versus-

- 1.** The Union of India represented by the Secretary, Ministry of Tribal Affairs, Government of India.
- 2.** The State of Arunachal Pradesh represented by the Secretary, Department of Health & Family Welfare, Government of Arunachal Pradesh, Itanagar.
- 3.** The Ramakrishna Mission represented by the President, Ramakrishna Mission, P.O. Belur Math, Dt. Howrah, West Bengal - 711202.
- 4.** The Ramakrishna Mission Hospital represented by the Secretary, Ramakrishna Mission Hospital, P.O. R. K. Mission, P.S.- Itanagar, Papum Pare District, Arunachal Pradesh.

.....Respondents

By Advocates:

Mr. Ninnong Ratan, CGC
Mr. A. K. Singh
Mr. M. Saikia
Mr. M. Raja

:::BEFORE:::
THE HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

Date of hearing : 30-08-2016
Date of Judgment & Order: 07-09-2016

JUDGMENT & ORDER (CAV)

Heard Ms. Nikita Danggen, learned counsel for the petitioner. Also heard Mr. Ninnong Ratan, learned CGC, for Respondent No. 1; and Mr. A. K. Singh, learned counsel for Respondents No. 3 and 4.

2. The gist of the case, at hand, in brief, is that, vide Order dated 01.03.1980, the writ petitioner was appointed as General Duty Worker under the Respondent No. 4/Ramakrishna Mission Hospital, on temporary basis, at a fixed salary of Rs. 340/-, and he, continued, thus, up to 30.03.1982. Vide another order dated 31.03.1982, he was given appointment to the post of Nursing Aid, which accordingly to the petitioner, was a fresh appointment having definite pay scale and other service benefits.

3. The grievance of the petitioner is that vide impugned order dated 31.01.2015, he had been retired from service on superannuation w.e.f. 24.03.2015, which according to him, is grossly illegal. As per service rules, a permanent employee shall retire from service on completion of 35 years service or attaining the age of 60 years.

4. The petitioner contends that he was appointed to the post of Nursing Aid, on regular basis, only on 31.03.1982 and from the said date, he will be completing 35 years of service as on 31.03.2017. However, the Ramakrishna Mission Hospital authorities, most illegally, counted the initial 2 years of petitioner's temporary service period, as GDW, in his permanent service length and thus, retired him early w.e.f. 24.03.2015.

5. It is the contention of the petitioner that superannuation takes place only in respect of permanent employees meaning thereby that the period of superannuation shall be counted from the day when the employee is appointed on permanent basis including probationary appointment.

Situated thus, the petitioner, in a joint representation with other similarly situated employees, prayed before the Ramakrishna Mission Hospital authorities for redressal of their grievances but the same remain unheeded to, till date. He had been compelled to receive his retirement dues, with pension thereafter.

6. Further contention of the petitioner is that Respondent No. 4/Ramakrishna Mission Hospital, Itanagar, is a branch of Respondent No. 3/Ramakrishna Mission, West Bengal, and the same is a registered Society under the Society Registration Act, 1860. The Ramakrishna Mission Hospital, Itanagar, is receiving grant-in-aid from the Union of India as well as State Government for running the said Hospital, including staff salary, equipment purchasing and maintenance, building construction, etc.. Since the Ramakrishna Mission Hospital, Itanagar, is carrying out public duties and it is being substantially aided by the State Government as well as by the Central Government, therefore, though it is a registered Society, but it comes under the meaning and ambit of State, as provided in Article 12 of the Constitution of India.

7. Per contra, the Respondent No. 4, by filing the counter affidavit, has contended that on 29.02.1980, the petitioner had qualified for appointment as a GDW and w.e.f. 15.03.1980, he was appointed purely on temporary basis at consolidated pay of Rs. 340/- and after completion of 2 years service, he was promoted to the post of Nursing Aid, on probation basis, for a period of 2 years w.e.f. 01.03.1982. As such, the retirement date has been counted from the date of his initial appointment and not from the date of promotion to the post of Nursing Aid.

8. As per Clause 8(1) of Service Rules of Ramakrishna Mission Hospital, Itanagar, a permanent employee/staff normally retire from the service of the Hospital after 35 years of service or on attaining the age of 60 years. In the petitioner's case, he had

completed his 35 years of service from the date of initial appointment as on 01.03.1980. since the service length of an employee of Ramakrishna Mission Hospital has to be counted from the date of his initial appointment and not from the date of his promotion, therefore, the petitioner's retirement fell on 24.03.2015 and not on 31.03.2017 and as such, the petitioner has no legal right to claim for continuance in service till 31.03.2017.

9. Another limb of argument advanced by the Respondent No. 4/ Ramakrishna Mission Hospital, Itanagar, through its counter affidavit, is that it is a registered Society under the Societies Registration Act, 1860, and it does not fall within the definition of public authority as it is not owned, controlled, or substantially financed, directly or indirectly, by funds; by the appropriate Governments, be it Central or State.

10. Furthermore, it is the contention of the Respondent No. 4 that the petitioner had withdrawn all the service benefits, thereby, accepting the impugned order 31.01.2015 in letter and spirit, and now, at such a belated stage, he cannot file this writ petition and the same may be dismissed, with cost.

11. In response to the said counter affidavit, the petitioner has filed an affidavit-in-reply, in which, he has contended that he was neither regularized in the service of GDW, nor salary, as per regular service, was paid to him in the post of GDW, and as such, it can be easily construed that appointment of the petitioner, later on, to the post of Nursing Aid, was purely a fresh appointment. That apart, in general context regarding service rules, probation period of 1 year or 2 years, is made mandatory for an employee only once during his service period, that too, in the initial post of his/her regular appointment. However, the petitioner while serving as GDW, was never put under probation for 2 years since his appointment to the post of GDW was not a regular appointment.

12. As far as receipt of retirement benefits by the petitioner is concerned, it is contended that he had to receive the same from the Secretary, Ramakrishna Mission Hospital, Itanagar, despite lodging a protest before the authorities concerned of the said Hospital, to the manner of his forceful retirement, as the Respondent No. 4/ Secretary, was the Head of the Hospital, and he cannot deny his obey/command. Moreover, the petitioner was not at all aware of the legal consequences of receiving the retirement benefits, as he was basically a layman.

13. I have considered the submissions of the learned counsel for both the parties. The bone of contention, according to the learned counsel for the petitioner is that, the petitioner was appointed against the permanent post as Nurse-in- Aid only on 31.3.1982 and his earlier period of appointment with effect from 1.3.1980 onwards, which was purely on temporary basis cannot be taken into account for the purpose of pensionary benefit by the respondent authorities. On the other hand, according to the learned counsel for the State Respondents, the petitioner was qualified for appointment w.e.f. 15.3.1980 and thereafter he was promoted to the post of Nurse in Aid on probation basis w.e.f. 1.3.1982, so his date of appointment has been counted from the date of his initial appointment and not from the date of promotion.

14. After careful examination of first appointment letter of the petitioner vide Annexure-1, it reveals that the petitioner was appointed on purely temporary basis at a consolidated pay of Rs. 340/- per month without any pay scale w.e.f. 1.3.1980. By subsequent letter Annexure-2 the petitioner stated to be promoted to the post of Nurse in Aid on probation basis for two years w.e.f. March 1, 1982 with pay scale of Rs.225-6-267-EB-6-09. It is also clarified that he will be all time employee of the Respondent Authorities. Now let us discuss about the Service Rules of Ramkrishna Mission Hospital, Itanagar, (which is guided and conducted by the Headquarter at Belur Math, Hawrah, West Bengal) vide Annexure-4 where it is specifically mentioned that this Rules shall be applicable to all the persons in employment of Ramkrishna Mission Hospital. The aforesaid rules definition 2(i)(h) the word 'consolidated pay' means a lum sum amount paid to a person as per the terms of service/contact without there any other service benefit such as leave, DA, HRA Ex-gratia etc but

amenable to PF. Rule 4(b) defines 'permanent employee' as " a person appointed in a permanent post and includes inter alia any person who has satisfactorily completed probationary period in the same or another occupation in the establishment, including breaks due to sickness, accident, leave or involuntarily unemployment. The 'permanent post' has been defined as full time post within a definite scale of pay or allowance if any. Again according to Rule 4(c) temporary employee means an employee engaged purely on temporary basis for fulltime work on consolidated wages for a specific period less than 240 days in a calendar year. Such a staff can be reemployed after a break of 130 days if necessary. In the said rule vide clause 8 provides that a permanent employee/staff shall normally retire from the Hospital after 35 years of service on attaining the age of 60 years provided further the management, the interest of Hospital may extend the service of an employee/staff even after 35 years of service or attaining the age of 60 years, whichever is earlier.

15. A bare reading of the aforesaid rules indicates that the petitioner was initially temporarily appointed with a consolidated pay without any other service benefit and was not appointed against a permanent post. Such an employment, without therein any pay scale cannot be given the status of permanent employee at the time of his temporary employment in terms of his initial appointment. On the other hand, in the second appointment letter so issued in the year 1982 the petitioner was given the benefit of pay scale and also allowed to go on probation which indicates that he was appointed to a permanent post only w.e.f. 1.3.1982. Though the Respondent Authorities has put the word promotion while issuing Annexure-2 but the same was the actual appointment of the petitioner against the permanent post and all purposes the petitioner can be termed as a permanent employee from the date of such appointment. Even the respondent authorities cannot promote a temporary employee to a regular post which is itself illegal. However, with an intention to give retirement to the petitioner they have calculated the period of service of the petitioner with effect from his past joining as temporary employee. Such a contention of the respondent authorities is itself against their standing rules as has been mentioned above vide Rule 8 that a permanent employee shall retire from service after 35 years of his service". The petitioner who was not posted against any permanent post at

the time of his initial appointment cannot be termed as a permanent employee since the date of his appointment. All above indicates that the petitioner was posted against permanent post as on 1.3.1982 while he was given all the service benefits. Obviously, the respondent authorities cannot take any recourse beyond their own rules and procedure. In such backdrop the issuance of letter vide Annexure-3 that the petitioner is to retire as on 24.3.2015 counting his period of joining from the date of his initial appointment is bad in law when the petitioner has not completed 35 years of continued service as against the permanent post.

16. Another vital issue raised by the petitioner that the respondent authorities is a State within the meaning of Article 12 of the Constitution and amenable to the jurisdiction of Article 226 of the Constitution of India. It is specifically pleaded in the petition that the respondent authorities carrying out the public duties and substantially aided by the State of Arunachal Pradesh and by the Central Government. In this respect the petitioner has relied upon Annexure-P, issued by the Ministry of Tribal Affairs, Govt. Of India dated 4th August, 2015 whereby grant-in-aid has been provided as recurring expenses to Ramkrishna Mission Hospital, P.O.Ramkrishna Mission, District- Papum Pare for maintenance and running of the ongoing project of 60 bedded hospital, whereby an amount of Rs. 65,29, 628/- has been released, subject to inspection by the sanctioning authority, and audit, both by the Controller and Auditor General of India for the provisions of CAG (DPC) Act, 1971. The salary of staff also directed to be paid through cheque/bank. The aforesaid letter was issued by the Under Secretary to the Government of India. It is to be noted that the respondent authorities has made any reply to the aforesaid vital document referred by the petitioner's side and remained silent while filing their affidavit, except denial simpliciter that the respondent authorities is not a public authority and not financed, controlled by the Government Authorities, that it is not a State within the meaning of Article 12 of the Constitution of India. Such a evasive denial of the respondent authorities is of no consequence as they have failed to rebut such vital challenge made by the petitioner. On the other hand the learned counsel for the petitioner has vehemently contended that in view of the nature of functions discharged by the respondent authorities which is public in nature it can be safely concluded that the

Respondent Ramakrishna Mission Hospital is a State as mentioned in Article 12 of the Constitution of India and as such amenable to the writ jurisdiction of the High Court.

17. The case reported in **2000 (3) GLT 441, (Parimal Chakraborty –vs- State of Meghalaya and ors.)** while dealing with such matters, whether teacher of a private College receiving grants-in-aid from the State is entitled to invoke writ jurisdiction for reinstatement for the post of Principal, it was held that Private Educational Institution which is discharging the function of a State is rendering public duty, Writ will lie against the Institution.

18. The learned counsel for the petitioner has relied on the following decision, reported in **AIR 1979 (3) SCC 489 Ramana Dayaram Setty –vs- International Airport Authority of India**, wherein it has been held that besides the so called traditional functions the modern State operates as a multitude of public enterprises and discharged a host of other public functions. If the functions of the Corporation are of public importance and closely related to the Govt. functions, it would be a relevant factors in classifying the corporation as an instrumentalities or agencies of the Govt. The Institutions engaged in high public interest or performing public functions are by virtue of the nature of functions performed Govt. Agencies. The activities which are too fundamental to the society are by definition too important not to consider the Govt. functions. The petitioner also relied upon a decision reported in **AIR 1981 (1) SCC 722 , Ajay Hasia –vs- Khalid Muzib Sehravardi**, wherein it has been broadly discussed when a Institution is an instrumentality of the Govt. it will come within the expression of Article 12, the State. Another decision rendered by this Court in 2005 (4) GLT 150 has been referred wherein Ramkrishna Mission School is stated to be 'the State' within the ambit of Article 12 of the Constitution in view of the nature of public duty they discharged and receiving grant in aid from Government.

19. In the given case the document reveals that the respondent nos. 3 and 4 receiving grant-in-aid from the Central Government and thus public money is involved in running the Institution as the respondent authorities is discharging public duties. The public funds when given away by way grants-in-aid, not as load carry the public character, and the public fund cannot be donated for private purpose. The element of public character necessarily means a fair conduct in all respects consistent with

constitutional mandate of Article 14 and 15. Further, the Apex Court in **(2005) 4 SCC 649 (Gee Telefilms & ors-vs- Union of India and ors)** it has been held that once a school received the State patronage its activities would be State activities and thus would be subject to judicial review. In view of such pronouncement and in view of the nature of duties discharged by the respondent authorities and the functions having public element in it and when the Central Govt. Fund is also offered to the Institution and the Audit Department of the Govt. of India has also the authority to inspect the account of Ramkrishna Mission so far it relates to grants-in-aid provided by the Central Govt., there cannot be any denial that the R.K.Mission is functioning as a State within the meaning of Article 12 of the Constitution. The plea of the respondent authorities is that they being a registered society without getting any aid from any Government cannot be sustained in view of the findings and discussions mentioned above.

20. Consequently, it is held that the case of the petitioner has sufficient merit and he has been compelled to go for retirement prior to 35 years of his continued service from the date of his posting to the regular permanent post w.e.f. 1.3.1982 and as such the impugned communication Annexure-3 made by the respondent authorities retiring the petitioner is w.e.f. 24.3.2015 is bad in law and liable to be interfered with and accordingly set aside. The petitioner is allowed to continue in his job till completion of his 35 years of continued service since the date of his joining to such post w.e.f. 1.3.1982. Even though the petitioner has been granted the pensioner benefit, the same has to be adjusted only after his regular course of retirement as indicated above. Respondent Authorities are hereby directed to allow the petitioner to continue his service till date of his superannuation as on 31.03.2017. The petitioner will be entitled to all the service benefits and consequential benefits from the date of his continuance of his service from which he was stated to have retired.

With findings and directions above, the writ petition is allowed. No order as to costs.

JUDGE

Bikash Nandi