

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2755/2012 & CM No.2548/2014**
W.P.(C) 4055/2013 & CM Nos.9557 & 13329/2013

Decided on : 29.10.2014

IN THE MATTERS OF
WP(C) No.2755/2012

MANGALA KHATTAR AND ORS Petitioners

Through Mr. Zeyaul Haque, Adv.

versus

GOVT. OF NCT OF DELHI AND ORS Respondents
Through Mr. Anjum Javed and Mr. Devendra
Kumar, Advocates for R-1.
Mr. Siddharth Dias, Adv. for R-2/
FPAI.
Mr. Ajay Digpaul, CGSC for R-3.

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W.P.(C) 4055/2013

DR. J.B. BABBAR & ORS. Petitioners

Through Mr. Zeyaul Haque, Adv.

versus

FAMILY PLANNING ASSOCIATION OF INDIA NEW DELHI & ORS.

..... Respondents
Through Mr. Siddharth Dias, Adv. for R-1/
FPAI.
Mr. Rajiv Nanda, ASC for R-2.
Mr. Apar Gupta, Adv. for UOI.

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (ORAL)

1. This common judgment shall dispose of the petitions filed by the

petitioners as the issues raised in these writ petitions are common. For the sake of convenience, facts of W.P.(C) 4055/2013 are taken note of.

2. The present petition has been filed by 10 petitioners who are employees of the respondent No.1/FPAI praying *inter alia* for quashing/setting aside communications dated 12.6.2013 and 17.6.2013 issued by the respondent No.1, terminating their services. The petitioners also seek directions to the respondent No.1 to absorb them in any of its units spread across Delhi. In the alternative, the petitioners seek directions to the respondent No.1/FPAI to extend the Voluntary Retirement Scheme to them, as per its practice.

3. In the order dated 3rd July, 2013, it was observed that since it could not be disputed on behalf of the respondents that the petitioners had put in work over the last few months, and they were not paid their salaries, the respondents were directed that the petitioners who have worked, should be paid their arrears of salary before the next date of hearing, i.e., before 14th August, 2013.

4. On 14th August, 2013, the Court was informed that out of 10 petitioners, four of them, namely petitioners No.5, 7, 8 and 9 have been accommodated by the respondent No.1/FPAI by giving them fresh jobs. It was observed in the order that such of the remaining petitioners who had not submitted their bio-datas, should submit the same to the respondent No.1/FPAI within two weeks whereafter the said respondent will comply with the directions issued on 3rd July, 2013. Further, respondent No.2/GNCTD was directed to release the necessary funds to the respondent No.1 so that the salaries of the petitioners could be released for the period for which they had worked with the respondent No.1/FPAI.

5. Thereafter, respondent No.2/Govt. of NCT of Delhi had filed an interim application, registered as CM 13329/2013, for clarification/modification of the orders dated 3rd July, 2013 and 14th August, 2013 and explained therein that the Govt. of NCT of Delhi only releases the funds received in the form of Grant-In-Aid from the respondent No.3/Govt.of India and as the same had not been received, no liability could be fastened on it for release of funds to the respondent No.1/FPAI, for payment of salaries to the petitioners. Vide

order dated 23rd September, 2013, it was directed that for the time being, the salary would be paid to the petitioners, but the respondent No.2/GNCTD need not release any further funds for the salaries that pertain to the year 2012-13. Respondent No.2 was also directed to file a report of the Grant-In-Aid Committee and the correspondence exchanged with the respondent No.1/FPAI on this aspect.

6. On the next date of hearing, i.e., on 30th October, 2013, it was observed that the earlier connected writ petitions were disposed of vide order dated 12th April, 2013 wherein it was held that similarly placed petitioners could not claim regularization in view of the Constitution Bench judgment of the Supreme Court in the case of ***Secretary, State of Karnataka vs. Umadevi and Ors.*** reported as ***(2006) 4 SCC 1***. However, as the petitioners claimed that they should be accommodated in other Schemes of the respondent No.1/FPAI, and pursuant thereto, some of the petitioners were accommodated in other Schemes being operated by the respondent No.1, the first relief prayed for in the present petition was disposed of on the aforesaid date with directions issued to the respondent No.1/FPAI to grant necessary re-employment to the remaining petitioners on their existing posts, in accordance with law.

7. Learned counsel for the petitioners states that in view of the directions issued on 30.10.2013, the alternate prayer made by the petitioners for extension of VRS to them, is not pressed.

8. Coming to the claim of the petitioners for release of the arrears of their salaries for the periods for which they had worked with the respondent No.1, it was noted in the order dated 30th October, 2013 that there appeared a dispute between the respondent No.1/FPAI on the one hand and the respondent No.2/Govt. of NCT and respondent No.3/Ministry of Health and Family Welfare on the other hand with regard to transfer of funds to the respondent No.1 under the Grant-In-Aid for the project known as "Composite Pattern Scheme" and the said issue could only be considered on completion of pleadings of two pending interlocutory applications filed by the respondent No.2/GNCTD (CM Nos.13329-30/2013) and on completion of pleadings in respect of the additional affidavit that was filed by the respondent No.2.

9. On 22.01.2014, it was clearly indicated to the learned counsel for the petitioners that the scope of the present petitions was limited and the relief being sought by the petitioners for release of arrears of

salary did not find mention therein and therefore necessary steps would have to be taken to expand the scope of the said petitions. It may be noted that despite the said observation, the petitioners have not taken any steps to amend the writ petitions.

10. On 16th April, 2014, the previous orders passed in the matters were summarized and while dealing with C.M. 13329/2013, filed by the respondent No.2/GNCTD, it was observed that it would be necessary for the petitioners to file details of the salaries due to them and the period for which the said salaries were due, with copies to the other side. Mr. Haque, learned counsel for the petitioners states that he had made compliances of the said order and furnished relevant details to the respondents, but he concedes that he has not taken steps to amend the writ petitions in terms of the earlier order.

11. Counsel for respondent No.1/FPAI states that the amounts indicated by the petitioners as arrears of salaries are no doubt outstanding, but he expresses the inability of the respondent No.1 to release the said amounts on account of failure on the part of the respondent No.2/Govt. of NCT and the respondent No.3/Ministry of Health and Family Welfare to release the Grant-In-Aid in its favour.

12. There is no dispute about the fact that the salaries that were payable to the petitioners up to the year 2011-12, stand paid. The dispute has narrowed down to the claim of the salaries payable to the petitioners for the period with effect from the year 2012-13. The stand of learned counsel for the respondent No.2/GNCTD is that the respondent No.1/NGO has not performed satisfactorily in implementing the Composite Pattern Scheme and therefore the Grant-In-Aid Committee constituted by the GNCTD has not recommended release of payments to the said respondent. The said submission is however denied by learned counsel for the respondent No.1/FPAI.

13. Pertinently, neither the petitioners herein, nor the respondent No.1 have raised the aforesaid dispute before any forum for adjudication. Further, despite an opportunity afforded to them, the petitioners have failed to amend the present petitions and ask for the said relief. Learned counsel for the petitioners concedes that as on date, nothing further survives in the present petitions.

14. In the aforesaid circumstances, it is deemed appropriate to dispose of the present petitions with liberty granted to the respondent No.1/FPAI to seek its legal remedies against the respondents No.2 and 3 for release of the Grant-In-Aid under the Composite Pattern Scheme

for the year 2012-13. This shall however not preclude the petitioners from invoking their independent remedies against the respondents for release of the arrears of salaries payable to them for the periods for which they have worked for the respondent No.1/FPAI, in accordance with law.

15. W.P.(C) 2755/2012 and W.P.(C) 4055/2013 are disposed of along with the pending applications, while leaving the parties to bear their own costs.

OCTOBER 29, 2014
km/mk

(HIMA KOHLI)
JUDGE