

Court No. - 6

Case :- WRIT - A No. - 3707 of 2024

Petitioner :- Evereen Jyoti Luke And 21 Others

Respondent :- Union Of India Thru. Secy. Deptt. Family Welfare And Medical Health And 7 Others

Counsel for Petitioner :- Shashank Singh, Ruby Choudhary

Counsel for Respondent :- A.S.G.I., C.S.C., Puneet Chandra

Hon'ble Abdul Moin, J.

1. Heard Sri Shashank Singh, learned counsel for the petitioners, Sri Sahraash Srivastava, learned Additional Chief Standing counsel appearing on behalf of the respondents no. 2, 4, 5, 6 & 8 and Sri Puneet Chandra, learned counsel for the respondent no. 3.

2. Notice on behalf of the respondent no. 1 has been accepted by learned Additional Solicitor General.

3. Instant writ petition has been filed praying for the following main reliefs:-

"(a) Issue a writ, order or direction in the nature of certiorari to quash the impugned office order dated 28.03.2024 issued by respondent no. 3 which is contained in Annexure No. 1.

(b) Issue a writ, order or direction in the nature of Mandamus commanding the respondents to regularize/absorb the petitioners in any of the schemes of NHM.

(c) Issue a writ, order or direction in the nature of Mandamus commanding and directing the Respondents to allow the petitioners to continue to work on the post of Nurse Mentors as they were working before the impugned order dated 28.03.2024, in the interest of justice."

4. The contention of learned counsel for the petitioners is that the petitioner were appointed on contractual basis as Nurse Mentors. The appointment order of one of the petitioners dated 17.11.2016 is filed as part of annexure 5 (page 136) to the writ petition.

5. The petitioners were continuing as Nurse Mentor when by means of order impugned dated 28.03.2024, a decision has been taken to not renew their contractual services w.e.f 31.03.2024.

6. The reasons as emerge from a perusal of the said order is that for the financial years 2024-2025 & 2025-2026, the Government of India has not approved the continuance of the Nurse Mentoring Programme.

6. The argument of the learned counsel for the petitioners is that keeping in view the Division Bench judgment of this Court in the case of Dr. Devendra Pratap Singh and Ors Vs. Union of India and Ors passed in Service Bench No. 769 of 2011 decided on 08.07.2011, the judgments of the Apex Court in the cases of **GRIDCO Limited and Ors Vs. Sadananda Doloi and Ors** reported in **AIR 2012 SC 729**, **Confederation of Ex- Servicemen Associations and Ors Vs. Union of India** reported in **AIR 2006 SC 2945**, **Air India Statutory Corporation and Ors Vs. United Labour Union and Ors** reported in **AIR 1997 SC 645** as well as the Article 21 of the Constitution of India and as the matter pertains to health service consequently, the impugned order dated 28.03.2024 merits to be set aside.

7. On the other hand, Sri Puneet Chandra, learned counsel for the respondent no. 3 states that the aforesaid order has been passed whereby a conscious decision has been taken by the competent authority to not extend the contractual services of the petitioners after 31.03.2024 on the ground that the Government of India has not granted approval for extension of the Nurse Mentors programme for the financial years 2024-2025 & 2025-2026. It is thus contended that once the programme itself has not been continued by the Government of India, which was being run on the financial assistance being provided by the Government of India, consequently, there cannot be any occasion for extension of the contractual services of the petitioners.

8. Heard learned counsels appearing on behalf of the contesting parties and perused the records.

9. From a perusal of records it emerges that all the petitioners had been appointed as Nurse Mentors on contractual basis. The said appointment has been made in the programme being run by the Mission Director of the National Health Mission on the basis of concurrence by the Government of India. As per order impugned dated 28.03.2024, the Government of India has not granted approval for running the programme for the financial year 2024-2025 & 2025-2026 and consequently, by means of the order impugned, the competent authority has provided that the contractual services of the petitioners shall not be

extended or renewed and shall stand terminated.

10. Once the services of the petitioners were being rendered in a programme being run on the basis of concurrence of Government of India and the Government of India has not granted approval for extension of the said programme i.e Nurse Mentors Programme and on the basis of the same, the contractual services of the petitioners are not being extended as such, there cannot be said to be any illegality or infirmity with the said order. Once the programme itself has come to an end consequently, the contractual services of the petitioners, who were appointed in the said programme would also come to an end and there cannot be any occasion for the services of the petitioners to be renewed or continued or extended once no programme is now continuing. Thus, the non extension of the contractual services of the petitioners would not *per se* fall within the ambit of the contractual services being terminated rather on account of non extension of the services on account of the programme itself having come to an end consequently, there cannot be any occasion for the services of the petitioners to be continued on contractual basis once the programme itself has come to an end.

11. So far as the argument of the learned counsel for the petitioners on the ambit of Article 21 of the Constitution of India, there cannot be any quarrel to the aforesaid argument. However, this Court is not having jurisdiction pertaining to entertaining the petitions more particularly Public Interest Litigation and as such, once the Government of India has itself not decided to extend the programme on account of no concurrence having been granted by it and further there is no relief in the petition praying for extension of the said programme and it being a policy decision, no interference is required by this Court in this regard.

12. Needless to mention that it would always be open for the petitioners to file an appropriate petition in accordance with law before the appropriate Court seeking extension of the programme on the basis of Article 21 of the Constitution of India.

13. So far as the Division Bench judgment of this Court in the case of **Dr.**

Devendra Pratap Singh (supra) is concerned, the said judgment pertains to the contractual services of the Male Ayush doctors and pharmacists being terminated despite the Government of India continuing with the original scheme in which they had been appointed and had provided sufficient fund.

14. In the instant case, as already indicated above, the programme itself has come to an end and thus, there cannot be any continuance of the contractual services of the petitioners in the absence of the programme itself. Thus, the Division Bench judgment of this Court in the case of **Dr. Devendra Pratap Singh (supra)** would have no applicability in the facts of the instant case.

15. So far as the judgment of the Apex Court in the case of **GRIDCO Limited (supra)** is concerned, the services of the contractual employees had been terminated and in those circumstances the contractual employees had approached the writ Court. It was not a case of non continuance of the company in which the contractual employees had been appointed. Again the said judgment would have no applicability in the facts of the instant case more particularly when the programme in which the petitioners were rendering contractual services has come to an end.

16. The judgment of the Apex Court in the case of **Confederation of Ex-Servicemen Associations and Ors (supra)** was a petition under Article 32 of the Constitution of India filed as a Public Interest Litigation for a direction to the Union of India to recognize the right of full and free medicare of ex-servicemen, their families and dependents.

17. Again the said judgment would have no applicability to the facts of the instant case keeping in view the discussion made above.

18. So far as the judgment of the Apex Court in the case of **Air India Statutory Corporation and Ors (supra)** is concerned, it was a case where the employees were appointed as contract labour and the Central Government had issued a notification under Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 prohibiting employment of contract labour and the contractual

employees had prayed for their absorption. Again the said judgment would have no applicability in the facts of the instant case wherein, as already indicated above, the scheme in which the petitioners were rendering contractual services has not been extended by the Government of India.

19. So far as the oral prayer made by the learned counsel for the petitioners for a direction to the Government of India to extend the scheme, suffice it to say that the decision of the Government of India to extend or not extend the scheme would fall within the realm of a policy decision and in case the Government of India in its wisdom has decided to not extend the scheme as such, no such direction can be issued by this Court.

20. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the writ petition is dismissed.

Order Date :- 15.5.2024

Pachhere/-