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

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Date of Decision: 25.07.2024

+ **LPA 530/2024**

GOVT OF NCT OF DELHI THROUGH DIRECTORATE OF
FAMILY WELFAREAppellant

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mr. Nitesh Kumar
Singh, Ms. Laavanya Kaushik, Ms.
Aliza Alam and Mr. Mohnish
Sehrawat, Advocates.

versus

NISHA AND ORS

.....Respondents

Through: Ms. Nandita Abrol, Ms. Meghna De.
Ms. L. Gangmei, Ms. Surbhi B., Ms.
Komal Narula and Mr. Lakshay
Luthra

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

CM APPL. 36521/2024 & 36524/2024 (exemption)

1. Exemption is allowed, subject to all just exceptions.
2. Applications stand disposed of.

CM APPL.36523/2024

3. This is an application moved on behalf of the appellant seeking condonation of delay in filing the appeal which has been strongly opposed



by the learned counsel for the respondents by submitting that the delay is not properly explained by the appellants.

3.1 According to the appellant, there is a delay of one hundred and twenty five (125) days in filing the appeal.

4. Although the period of delay is substantial, we in the interest of justice propose to condone the same as we intend to take up the appeal for hearing on merits. Accordingly, the delay in filing is condoned, and disposed of.

LPA 530/2024 & CM APPL.36522/2024(stay)

5. The present appeal is filed under Clause X of the Letters Patent Act against the impugned judgment dated 12.12.2023 passed by the learned Single Judge seeking following prayer:

“(a) Quash and set aside the impugned Judgment dated 12.12.2023 passed by the Learned Single Judge in W.P(C) No. 15950/2023 and consequently quash the Award dated 10.07.2023, in ID No. 637/2016 (New).”

6. The Ministry of Health and Family Welfare, Government of India from time to time launches various programmes with respect to health improvement in the country, which are projects implemented through States. Some of these projects are 100% funded by the Government of India, which are to implement schemes for providing health care for the children, women and adolescents. The Government of India introduced Reproductive and Child Health (RCH) project to improve maternal and child health care services and for co-ordination of governmental and voluntary action in the health care field. This programme was implemented all over India by the Health Department of all States and Union Territories, through the societies constituted by them. The project was introduced on 15.10.1997 and was 100% funded by the Government of India across the country including Delhi



as per norms and guidelines of the project.

7. Further, to implement the project in Delhi, a society was constituted under Societies Registration Act, 1860 by the name of Standing Committee on Voluntary Action (SCOVA) and Director Family Welfare was the Member Secretary of the Society. The society functioned under the supervision of Chairman/Secretary, Health and Family Welfare.

8. All the activities/schemes on maternal and child health welfare were evolved into above mentioned vertical programme in 2000-2001 i.e., RCH completely funded by the Government of India. Further, due to constraints of most states in addressing manpower and other infrastructure gaps, Government of India sanctioned engagement of manpower on contractual basis with funding provided through SCOVA. Consequently, among others i.e., Doctors, Lab Technicians, Account Assistants etc., engaged on contractual basis, the Respondents were also engaged as an Auxiliary Nurse Midwives (ANMs) on contractual basis to implement the project.

9. The aforesaid facts recorded herein are not disputed by the parties.

10. Learned counsel appearing on behalf of the appellant has pointed out that individuals on contractual basis were also engaged to implement other projects like National Iodine Deficiency Programme and since the Iodine Deficiency is no longer a public health issue in Delhi, therefore, the programme has been discontinued. And as a result, the individuals engaged under the programme have been discontinued.

11. Learned counsel for the appellant further submits that under the project, the ANMs were paid a fix remuneration of Rs.4,000/- + D.A as applicable from time to time till RCH-1 project was in place i.e., 31.03.2005. Learned counsel for the appellant further contended that from



13.04.2005 National Rural Health Mission (NRHM) was launched across the country. In 2006, vertical programmes for blindness, goitre, leprosy, vector borne diseases, RNTCP (Revised National Tuberculosis Control Programme) including RCH Programme were subsumed under overall umbrella of NRHM. In Delhi, NRHM is being implemented through Delhi State Health Mission (DSHM) a society constituted under the Societies Registration Act, 1860. Learned counsel for the appellant also submits that to streamline the project programmes funded by Government of India, State Health Society at the State Level (SHSD) and Integrated District Health Society in each District (IDHS) was constituted in Delhi to facilitate the projects funded by Government of India.

12. It is contended by learned counsel for the appellant that from time-to-time, Government of India increased the remuneration of the individuals engaged on contractual basis with respect to ANM as in 01.04.2007 it was Rs.7840/-, which was further increased in September, 2007, to Rs.8500/-, from 01.04.2009 to Rs.12,000/-. She further contended that, presently the remuneration of Respondent no.1/Nisha as on 31.03.2024 is Rs.47053/- (Rs.33433/- Government of India remuneration plus Rs. 13620/- State incentive)

13. Learned counsel for the appellant further contended that from 29.12.2009 the RCH project was further de-centralized to IDHS (DPMU) under the administrative control of DC, Revenue and CDMO of the Districts.

14. Learned counsel for the appellant further contended that knowing fully well, that the project is now supervised by the respective District Authorities i.e. DC-Revenue and CDMO of the District, on 30.08.2010 an



industrial dispute was raised against Management of Directorate of Family Welfare (who is nobody in the project) without impleading Central Government under whose project the whole programme is being carried out, so also to the State Health Services Department, DSHM, DC-Revenue and CDMO were not made party. The claim was raised by 24 persons seeking regularization on the post of ANM with retrospective effect i.e. from their respective initial date of joining and the management be directed to pay them the entire difference of salary on the principle of equal pay for equal work along with consequential benefits.

15. Further, learned counsel for appellant also relied on the cases of *Delhi Development Horticulture Employees' Union vs. Delhi Administration, Delhi & Others*, reported in (1992) 4 SCC 99 and *Gurbachan Lal vs. Regional Engineering College, Kurukshetra & Others*, reported (2001) 11 sec 102, in support of her contentions.

16. In addition to above, the learned counsel for the appellant draws the attention of this court towards the judgment titled *Madhu Sharma & Ors. Vs. GNCTD of Delhi & Ors.*, in W.P.(C) 3873/2011, in which similar and same issue was there *qua* the same project and that the said petition was dismissed vide order dated 17.04.2013.

17. The respondents herein approached the Industrial Tribunal under the Industrial Disputes Act, 1947 relating to their claim that they were employed as Auxiliary Nurse Midwives (ANMs) and working at various Maternity & Child Welfare Centres and dispensaries, engaged on contractual basis, however, they had been working continuously and uninterruptedly since their joining in 2000-2001. They claimed that their work was regular and permanent in nature and they are entitled to salaries in regular pay scale with



usual allowances. Further, they had been unfairly denied emoluments despite having been regularly engaged in services as midwives in various government establishments/ hospitals of the Delhi government.

18. In the written statement filed by the appellant, they have contended that the ANMs were not employed by the Directorate of Family Welfare, GNCTD but by the Standing Committee on Voluntary Action (SCOVA) in accordance with the policies / guidelines of the Ministry of Health and Family Welfare (MoHFW) for Reproductive & Child Health Care (RCH) Projects.

19. The appellant objected to the demand of the said ANMs in paying them fixed remuneration of Rs.12,000/- per month, as opposed to their regular counterparts who were paid proper salary and allowances, was an unfair labour practice. The management had contended that the respondents appointments were merely contractual in nature under the Reproductive & Child Health Care Projects. Moreover, SCOVA had since been dissolved and its assets and liabilities had been transferred to Delhi State Health Society. According to the management, these ANMs received monthly remuneration on a fixed pay basis with periodic adjustments and were not entitled to the same benefits as regular government employees.

20. The learned Single Judge observed in the impugned order that, the impugned award would bear out, despite several opportunities to the management, neither an affidavit by way of evidence was filed nor any witness had appeared on behalf of the management. Vide order dated 07.02.2019, the Ld. Tribunal had closed the management's evidence and fixed the matter for arguments.

21. It is further observed by the learned Single Judge that learned



Tribunal had taken into account, the newspaper advertisements issued by the management i.e. Directorate of Family Welfare, GNCTD and office of integrated Health Society which clearly mentions “*details of terms and conditions for recruitment to the posts can be viewed on the website of the Government of NCT of Delhi under Department of Health and Family Welfare.*”.

22. The aforesaid was in reference to a newspaper advertisement issued by the District Health Society (Delhi) for walk-in interviews, notices of which included interviews for the posts of ANMs. The advertisement (Ex. WW- 1/12) shows that the number of posts for ANMs was segregated into General/SC/ST/OBC categories. Pursuant to the said advertisement, candidates were interviewed and were accordingly recruited.

23. The learned Single Judge went through the impugned order passed by the learned Tribunal and the fact that the ANMs had been performing the services since their initial date of joining and continued first through SCOVA and then through a different mission namely, Delhi State Health Mission (DSHM). The Learned Tribunal was of the opinion that the management, under the garb of different missions, is simply trying to evade responsibility towards the workers concerned who have been working continuously for the past 23-24 years. Accordingly, the relief sought by the respondents was granted by the learned Tribunal.

24. The learned Single Judge while passing the impugned order has relied upon on a decision of this Court in the case of ***Project Dir. Dep. of Rural Development v. Its Workman***, 2019 SC OnLine Del 7796 against which SLP (C) Dy. No. 34164/2019 was dismissed by the Supreme Court vide order dated 14.10.2019, thereby this Court’s decision attained finality.



25. This Court in ***Project Director*** (supra), in the facts and situation before it where the Rajya Sanik Board had recommended names of registered ex-servicemen to be appointed as caretakers of community centres, and pursuant to their initial appointment on contractual basis in 1997, had been in uninterrupted service for almost 22 years, then concluded as under:

"Thus, in the light of the observations of the Supreme Court in Ajaypal Singh (supra), ONGC (supra) and Umralla Gram Panchayat (supra) as also of this Court in Ram Singh (supra), I find that the petitioner's reliance on the decision of the Supreme Court in Uma Devi (supra) and of this Court in Anil Lamba (supra) is wholly misconceived. In my opinion, once the Tribunal was of the view that the petitioner was indulging in unfair labour practice, it was well within its domain to pass an order directing the petitioner to regularize the respondents' services. The petitioner has failed to make out any ground to interfere with the discretion exercised by the Industrial Tribunal in directing the petitioners to regularize the services of the respondents/workmen. There is no gainsaying that the writ jurisdiction and powers of superintendence of this Court have to be exercised only sparingly to ensure that the subordinate courts do not exceed their own jurisdiction and exercise it as and when required, or when there has been a manifest failure of justice, or when the principles of natural justice have been flouted. In my opinion, no such eventuality has occurred in the present case so as to warrant the exercise of powers of this Court under Articles 226 and 227 of the Constitution."

26. In view of above, the learned Single Judge has opined that the relief seeking under the writ jurisdiction the appellant introduced new aspects of evidence, which they chose not to lead before the learned Industrial Tribunal. Notwithstanding, the only argument is relating to the "temporary nature of appointment" in a project/ mission under the RHC of these ANMs. It is not disputed, however, they had been consistently engaged since 2000-



2001 and have spent around 23 to 24 odd years in the same service of providing midwife care in various hospitals.

27. Though the contractual services cannot be regularized but in the project the respondents are continuously working for more than 23-24 years, they cannot be kept engaged on contractual basis throughout in service life. This type of practice amounts to exploiting the poor and needy person which cannot be accepted.

28. So far as the judgment in the case of *Delhi Development Horticulture Employees' Union* (supra) and *Gurbachan Lal* (supra), relied upon by learned counsel for appellant is concerned, we find the same completely distinguishable from the present case as the facts of those cases are different from the facts of the present case.

29. Accordingly, we find no error or perversity in the order passed by the learned Single Judge as well as by the learned Tribunal. Consequently, finding no merit in the appeal, the appeal as well as pending applications stand dismissed.

30. The appellant is accordingly directed to comply with the directions of the Tribunal within six weeks from today failing which the appellant shall be liable to be prosecuted under the Contempt of Courts Act.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 25, 2024/ry