



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on: July 09, 2024**
Pronounced on: July 31, 2024
+ **W.P.(C) 9244/2024 and CM APPL. 37877-78/2024**

GOVT. OF NCT OF DELHI & ORS.Petitioners
Through: Ms. Avnish Ahlawat, Standing
Counsel with Mr. Nitesh Kumar
Singh, Ms. Laavanya Kaushik,
Ms. Aliza Alam and Mr. Mohnish
Sehrawat, Advocates

Versus

SHASHANK SINGH TOMAR & ORS.Respondents
Through: Mr. A.K. Behera, Senior Advocate
with Mr. Amarendra P. Singh,
Advocate

CORAM:

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

JUDGMENT

SURESH KUMAR KAIT, J

1. The petitioners have challenged order dated 22.12.2023 passed by the learned Central Administrative Tribunal ('Tribunal') in O.A. No. 1206/2018, directing the regularization of services of the respondents by giving them one time age relaxation, with consequential relief on notional basis and on actual basis upon actual joining.
2. According to the petitioners between 2008 till 2012, the respondents



were engaged as 'Welfare Officers' on purely contractual basis through a walk-in-interview and any extension of contract shall be valid till the posts are filled on regular basis or till the date of extension, whichever is earlier with an intention to meet exigencies of service. The respondents were never selected through a regular recruitment process and interviews were held without following the extent provisions of reservation for SC/ST/OBC prescribed by DoPT vide O.M. dated 24.09.1968 and reiterated vide O.M. 15.05.2018 for reservation in temporary appointment lasting for 45 days or more, as directed by Hon'ble Supreme Court vide order dated 03.10.2022 in W.P.(C) 1100/2022.

3. The term of contractual employees was upto 30.09.2012. However, pursuant to order dated 26.09.2012 in O.A. 3250/2012, *status quo* order in respect of their employment was directed to be maintained and they continued in service.

4. The petitioners vide advertisement No. 148/2014 advertised 74 vacancies for the post of Welfare Officer in Department of Social Welfare (DSW) and Department of Women and Child Development (DWCD) as per recruitment rules notified on 28.03.2000, whereunder recruitment could only be done through direct recruitment by way of competitive examination and there was no scope of regularization of contractual employees.

5. The Hon'ble Lieutenant Governor of Delhi in consultation with the UPSC notified recruitment rules for the post of Welfare Officer/Probation Officer/Prison Welfare Officer vide Gazette Notification (Amendment) dated 12.01.2017 wherein also there was no provision or clause for regularization or absorption of the contractual employees.

6. Various applications were preferred by the respondents before the W.P.(C) 9244/2024



learned Tribunal on the basis of the *status quo* order and the respondents continued in service on contract basis. In addition, the respondents made various representations dated 06.02.2017, 28.06.2017 and 18.07.2017 seeking their regularization.

7. The learned Tribunal vide order dated 10.08.2017 in O.A. 2683 /2017 directed the petitioners to decide representations made by the respondents. Vide order dated 16.11.2017, the representation of the respondents was rejected being pre-mature. The respondents filed OA NO. 1206/2018 seeking quashing of order dated 16.11.2017 passed by the competent authority of the petitioners and the learned Tribunal vide order dated 23.03.2018 directed the petitioners to maintain *status quo*.

8. In the said application [OA NO. 1206/2018], the respondents relied upon decision of this Court dated 06.11.2013 in W.P.(C) 6798/2002, titled as ***Sonia Gandhi & Ors. Vs. GNCTD*** seeking regularization of service. The Government of NCT of Delhi vide OM dated 11.06.2019 and 10.07.2019 granted one-time age relaxation to the contractual employees of all the departments for the number of years they have worked, maximum upto five years.

9. Yet again, the respondents on 18.10.2019 advertised 110 vacancies of Welfare Officers vide Advertisement No. 14/2019 as per Recruitment Rules notified on 12.01.2017 and all the contractual Welfare Officers, who had exceeded age limit, were given age relaxation to apply and appear in the recruitment process. According to the petitioners, none of the contractual Welfare Officers qualified the cut-off marks and therefore, was not selected.

10. The learned Tribunal vide order dated 22.12.2023 in O.A.1206/2018 allowed the prayer of the contractual employees and directed the petitioners



to regularize the services of the applicants giving them one time age relaxation as done in the case of Probation Officers.

11. During the course of hearing, learned counsel appearing on behalf of the petitioners submitted that the learned Tribunal did not consider that the respondents/applicants in O.A. No. 1206/2018 had participated in the selection process held in the years 2014 and 2019 but could not qualify and there was no policy decision by the Government of NCT of Delhi to give regularization to the contractual employees, except to give them age relaxation of five years. Thus, setting aside of order dated 12.12.2023 passed by the learned Tribunal is sought being perverse and illegal.

12. Learned counsel for petitioners submitted that reliance placed upon decision of this Court in W.P.(C) 5681/2014 is misconceived as the said case pertained to different class of employees with entirely different set of rules and circumstances of their engagement.

13. Learned counsel further submitted that the respondents have continued in service on contractual basis even after 2012 pursuant to *status quo* order passed on 26.09.2012 in O.A. 3250/2012 and they had no right to seek regularization of their service after having appeared in the selection process in the years 2014 and 2019 and not able to make through the selection process. Thus, quashing of setting aside of order dated 22.12.2023 passed by the learned Tribunal is sought.

14. On the other hand, the stand of the respondents is that the learned Tribunal, in the impugned judgment and order dated 22.12.2023, has rightly held that the respondents were recruited on contractual basis as Welfare Officers against sanctioned posts in the years 2007, 2008 and 2010 and thereby, rendered more than 13 to 15 years of continuous contractual service



and have been performing same duties and responsibilities as that of regular Welfare Officer but drawing lesser salary than them.

15. The learned Tribunal has also noted that Protection Officers appointed on contractual basis in the Department of Women of Child Development, GNCTD have been regularized in O.A. No.2909/2012, upheld by this Court in W.P.(C)5681/2014 and also upheld by the Hon'ble Supreme Court in SLP diary No. 39411/2017 vide order dated 23.03.2018 and thus, directing the petitioners to regularize service of the respondents in the same manner as that of the contractual Protection Officers in the Department of Women and Child Development, GNCTD is justified.

16. During the course of hearing, learned counsel appearing on behalf of the respondents pointed out that till the year 2023, the petitioners have not formulated any policy for regularization of contractual employees despite the fact that the respondents have already rendered 15 to 17 years of uninterrupted service. Reliance is placed upon decision in *State of Karnataka Vs. Uma Devi* (2006) 4 SCC 1, wherein it is held that those contractual employees, who were appointed by public advertisement against sanctioned posts and having continued service of 10 years should be regularized as a onetime measure.

17. Learned counsel further submitted that after having regularized service of contractual employees working as protection officers in the Department of Women and Child Development, GNCTD to regularize service of contractual employees under the same very Department of GNCTD cannot be permitted as the respondents were also appointed on contract basis but against the sanctioned posts of Welfare Officers. Reliance was placed upon decision in *Vinod Kumar & Ors. Vs. UOI & Ors.* 2024

W.P.(C) 9244/2024

Page 5 of 13



SCC OnLine SC 1533 in support of respondents' case.

18. With respect to contention of petitioners that the respondents have been permitted to continue in service under *status quo* order of the courts passed in different petitions, learned counsel for respondents submitted that in the said order, it has clearly been mentioned that the respondents were continued in view of letter dated 16.02.2015 issued by the Principal Secretary (Services) till the GNCTD takes policy decision about regularisation and thus, the contention of the petitioners that the respondents have continued in service for 15 to 17 years under the interim orders of this Court is falsified.

19. Lastly, it was submitted that the plea of the petitioners that the respondents have been given opportunity to appear in the selection process through direct recruitment but were unsuccessful, nowhere diminishes their long continuous uninterrupted service. Lastly, it was submitted that the present petition lacks merit and deserves to be dismissed.

20. The submissions advanced by learned counsel for the parties were heard at length and the material placed on record has been carefully perused.

21. The petitioners created the post of Welfare Officers/Probation Officer for implementation of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000. The respondents were engaged as Welfare Officers/ Probation Officers on contractual basis during the years 2008-2012 and their terms was up to 30.09.2012. However, an application being O.A. 3250/2012 was filed a few Welfare Officers, wherein vide order dated 26.09.2012 *status quo* in respect of employment of Welfare Officers was directed to be maintained and they are still continuing in service.

22. The respondents had preferred O.A.No. 2683/2013 before the learned



Tribunal seeking regularization of their service, which was disposed of vide order dated 10.08.2017 with liberty to make representation before the petitioners.

23. The representations made by the respondents were rejected by the petitioners vide order dated 16.11.2017, holding as under:-

***“DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT,
GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI, 1, PT. RAVI SHANKAR SHUKLA LANE, K.G. MARG,
NEW DELHI-110001***

No. F.32 (26)/OA 100/2683/2017/CAT/Lit./DWCD/2017/37376

Dated: 16.11.2017

ORDER

That the present order is being passed in compliance of directions of Hon'ble Central Administrative Tribunal dated 18.08.2017 in OA No. 2683/2017 & M.A. No. 2822/2017. The operative part of the order is reproduced as below:-

“In the circumstances, the O.A. is disposed of at the admission stage, without going into the merits of the case, by directing the respondents to consider Annexure A/I S (colly.) Representations of the applicants, keeping in view the averments and documents filed in the O.A., and to pass appropriate speaking and reasoned orders thereon, in accordance with law, within 90 days from the date of receipt of a copy of this order. Till then, the respondents shall maintain status quo in respect of the applicants. No order as to costs”.

The applicants who are presently working as contractual Welfare Officers have sought following relief:-

- 1. To frame a policy for regularization of applicants to the post of Welfare Officers and*
- 2. To make appropriate provisions in the Recruitment Rules for absorption of the applicants to the post of Welfare Officers as done by the respondents in the case of Probation Officers under the orders of the Hon'ble High Court of Delhi in Kiran Sharma V/s GNCT of Delhi & ors In W. P. (C) 5681/2014.*

With regard to regularization of the applicants to the post of Welfare Officers it is stated that the Government of NCT of



Delhi is in the process of formulation of policy in respect of the contractual employees of different categories appointed in the different Departments of the government.

As regards the appropriate provision in the Recruitment Rules for absorption of the applicants to the post of Welfare Officers as done by the respondents in the case of Protection Officers under the order of the Hon'ble High Court of Delhi, it is stated that the Protection Officers were appointed for implementation of the "Protection of Women from Domestic Violation Act, 2005" and to fulfill the statutory requirement of posting of Protection Officer with the Courts set up under the PWDV Act, 2005, the Department has engaged the services of the applicants as Protection Officer on contract basis on fixed remuneration, against the vacancies of Welfare Officers.

The applicants were appointed against the existing Recruitment Rules on contract basis knowing fully that their contract is liable to be terminated in case the posts of Welfare Officers are filled up on regular appointment.

It is further submitted that the case of "Kiran Sharma Vs. GNCTD of Delhi has not yet attained finality as the verdict of the Hon'ble High Court is in the process of being challenged before the Hon'ble Supreme Court. Thus the submission of the applicants in this regard is pre-mature which is liable to be rejected."

24. The learned Tribunal, in O.A. 1206/2018 preferred by the respondents against rejection of their representations vide order dated 16.11.2017 passed by the respondents, vide impugned order dated 22.12.2023 held as under:-

"6.1 The Contractual appointments were made by way of regular advertisement process, meaning thereby that the same has not been done in haphazard manner de hors the rules or for some extraneous consideration. Hence, their appointment is not illegal.

6.2 The applicants have been allowed to work voluntarily and continuously and uninterruptedly for more than ten years without even giving them a chance to participate for regular selection process against sanctioned vacancies.

6.3 Continuously contractual engagement for more than



ten years is non-est and is in gross violation of not only principles of natural justice but contrary to letter and spirit of Contract Labour (Regulation & Abolition) Act, 1970.

6.4 The applicants are working against sanctioned post having gained valuable experience as welfare officer for a long period.

6.5 CCS (Leave) Rules, have been made applicable. The grant of allowances in initial appointment has in-built salient features.

6.6 The prescribed and other essential qualifications are identical to that which are prescribed under RRs without any distinction or otherwise.

6.7 All the applicants do possess the requisite qualification as per RRs except the age.

6.8 The Chief Minister had accorded in principle approval to the regularization process, which is plain and unambiguous.

6.9 In similarly situated "Protection Officer" were extended the benefit of regularization, the government had regularized their services.

*6.10 Significantly, in terms of para 44 and 53 in **Uma Devi's** decision, the applicant do not lose their right to be considered for regularization as one time exercise.*

*6.11 Despite **Uma Devi's** decision as well as **State of Karnataka Vs M L Kesari** decided on 03.08.2010, the applicant(s) were allowed to work voluntarily and continuously and uninterruptedly for more than ten years."*

25. The petitioners are aggrieved of order dated 22.12.2023 passed by the learned Tribunal in O.A. 1206/2018 whereby services of respondents, who were engaged as Welfare Officers/ Probation Officers on contractual basis during the years 2008-2012, has been regularized.

26. Pertinently, the learned Tribunal has relied upon decision in **Uma Devi (Supra)**, wherein it is held as under:-

"53. One aspect needs to be clarified. There may be cases



where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

(emphasis supplied)

27. The petitioners in the present case were appointed in. the years 2008, 2009 and 2010 on contract basis as Welfare Officers for administering the Juvenile Justice (Care and Protection of Children) Act, 2000 in the Department of Women and Child Development, GNCTD. The petitioners have not disputed that these contractual appointments were made against regular, sanctioned and vacant posts for an initial period of six months under the contract but their contract stood revived from time.



28. Attention of this Court was drawn to a copy of order dated 21.04.2015 in OA No. 2050/2014 wherein on the statement of learned counsel for GNCTD, it has been observed by the learned Tribunal that vide Circular No. F.19(01)/2014/S-iv/223-224 dated 16.02.2015 the policy regarding status of contractual employees engaged in various departments and organisations under GNCTD is being reviewed and services of contractual employees may not be terminated.

29. The petitioners before this Court have pleaded that the afore-noted Circular dated 16.02.2015 was called off vide Order No. F.19(11)/2015/S.IV/1890-96 dated 19.10.2015. But the fact remains that while rejecting representations of the respondents, the petitioners vide order dated 16.11.2017, had also noted that efforts for formulation of policy *for regularization of applicants to the post of Welfare Officers* was under consideration. Hence, the stand of petitioners' that Circular dated 16.02.2015 was called off, cannot be accepted. What is relevant to note is that till date, no policy for regularization of the contractual Welfare Officer has been formulated by the petitioners.

30. The Hon'ble Supreme Court in its decision dated 03.08.2010 in ***State of Karnataka & Ors Vs. M.L. Kesari & Ors.*** (2010 (9) SCC 247) observed and held as under:-

“6. The term ‘one-time measure’ has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and



possess the requisite qualification for the post and if so, regularize their services.”

31. In our considered opinion, the learned Tribunal has rightly observed that despite decisions of Hon’ble Supreme Court in ***Uma Devi (Supra)*** rendered on 10.4.2006 and ***State of Karnataka Vs. M L Kesari*** decided on 03.08.2010, the applicant(s) were allowed to work voluntarily and continuously and uninterruptedly for more than ten years. Moreover, the petitioners, vide advertisement No. 148/2014 advertised 74 vacancies for the post of Welfare Officer in Department of Social Welfare (DSW) and Department of Women and Child Development (DWCD) and again vide Advertisement No. 14/2019 dated 18.10.2019 advertised 110 vacancies of Welfare Officers. Hence, consequent upon decisions of Hon’ble Supreme Court in ***Uma Devi*** and ***State of Karnataka (Supra)***, even though there were regular vacancies for the post of Welfare Officer, but petitioners chose to only give them one time age relaxation for appearing in the examination but chose not to consider them for regular appointment despite having requisite qualification and vast experience.

32. The Hon’ble Supreme Court in its decision dated 30.01.2024 in ***Vinod Kumar & Ors. etc. Vs. Union of India & Ors.*** 2024 SCC OnLine SC 1533 has observed that *essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a*



substantive departure from the temporary and scheme-specific nature of their initial engagement.

33. Even otherwise, the services of Protection Officers appointed on contractual basis in the Department of Women of Child Development, GNCTD have been regularized vide order dated 28.01.2014 passed by the learned Tribunal in O.A. No.2909/2012, which was upheld by this Court in W.P.(C)5681/2014 and the Special Leave petition [SLP diary No. 39411/2017] preferred by the petitioners (UOI) was also dismissed vide order dated 23.03.2018; and whose case respondents have relied upon. In our considered opinion, the case of the respondents is no less than the Protection Officers, whose services have been regularized.

34. With aforesaid observations, this petition is dismissed with direction to the petitioners to implement the aforesaid policy decision in the present case by regularizing the services of the respondents by giving them one time relaxation as done in the case of Protection Officers, in terms as mentioned in Para-7 of the impugned judgment dated 22.12.2023, within four weeks. It is made clear that seniority of respondents shall reckon from the date they are offered appointment on regular basis and their *inter se* seniority.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 31, 2024/r

W.P.(C) 9244/2024

Page 13 of 13