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

+ **W.P.(C) 10012/2024**

ASIA KHATOON AND ORS

.....Petitioners

Through: Mr. Sai Vinod, Mr. Sahil Ghai and
MS. Kanu Garg, Advocates.

versus

DELHI COMMISSION FOR WOMEN AND ORSRespondents

Through: Mrs. Avnish Ahlawat, SC, GNCTD
(Services) with Mr. Nitesh Kumar
Singh, Ms. Laavanya Kaushik,
Ms. Aliza Alam and Mr. Mohnish
Sehrawat, Advocates for R-2.
Mr. Rajshekhar Rao, Senior Advocate
with Ms. Zehra Khan, Ms.
Meherunissa Anand Jaitley, Mr. Arsh
Rampal, Ms. Ravisha Sharma and
Ms. Anauntla Shankar, Advocates for
R-1.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **14.11.2024**

CM APPL. 66512/2024 *(seeking a stay on the order dated 21.10.2024)*

1. Through this application, Petitioner expresses extreme and grave urgency and seeks stay of the operation of the termination order dated 21st October, 2024. Considering the above, instead of dealing with the stay application, which was earlier declined, the Court, with the consent of counsel for the parties, has called upon the main petition on board for final disposal today itself.



2. Disposed of.

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3. The facts leading to the filing of the present petition have already been noted in order dated 25th July, 2024. The said order reads as follows:

“1. The Petitioners, 49 in number, are contractual staff members engaged by Respondent No. 1 – Delhi Commission for Women, for varied roles. Their initial engagement period of three months has been periodically extended. Their grievance in the present petition pertains to order dated 29th April, 2024 issued by Respondent No. 2, Department of Women and Child Development, Government of NCT of Delhi, terminating the services of all contractual staff employed with DCW, with immediate effect.

2. A perusal of the impugned order indicates that this action of Respondent No. 2 has been by impelled by extensive financial and administrative irregularities in the functioning of the DCW. According to Respondent No. 2, DCW undertook additional financial liabilities by employing officers/ staff members and initiating infrastructural projects in excess of the sanctioned strength and allocated grants. The order highlights various instances of violations by DCW beyond their statutory obligations, that mandate them to obtain prior approval of the competent authorities before any expansion in staff/ infrastructure. As regards contractual appointments, such as those of the Petitioners’, Respondent No. 2 found that these engagements were made without any vacancy or sanctioned posts. In view of these irregularities, further supported by the findings given in the report of Principal Accountant General Audit, Government of India, the Hon’ble Lieutenant Governor, Government of NCT of Delhi constituted a Committee headed by the Chief Secretary, to examine the issue of illegal and unauthorised appointments and other irregularities within the DCW. The impugned order takes note of the Committee’s report which identified 223 contractual engagements as illegitimate, and has accordingly, directed cessation of services of the contractual staff employed by DCW as a corrective measure to rectify the situation.

3. However, the Petitioners contend that termination of contractual staff is arbitrary and irrational. They argue that they have been instrumental in the functioning of DCW, especially in programmes and special cells constituted for assistance of victims, such as Rape Crisis Cell, Crisis Intervention Cell, Anti-human Trafficking and Rehabilitation Cell etc. Despite their indispensable role and contributions, they have been terminated without reason, a decision that could severely disrupt DCW’s operations. Reference is also made to orders passed by this Court in W.P.(C) 11712/2016, where directions to release salaries of the staff



engaged/ outsourced by DCW have been issued. The Petitioners also rely on the minutes of meeting convened by the afore-mentioned Committee on 30th April, 2020 (dated 14th May, 2020), resolving as follows:

“The matter was discussed in detail and following decisions were taken:-

- 1. Since there are 160 persons working in DCW against 38 sanctioned posts, it would be appropriate to create $160-38 = 122$ new posts in DCW.*
- 2. Qualifications and remunerations for these posts will be as per the norms prescribed by the AR Department. The break-up of these 122 posts viz. regular/contractual/outsourced shall also be determined by GNCTD as per applicable norms.*
- 3. The existing 49 petitioners may be adjusted against the proposed newly created posts, subject to the fulfilment of the norms prescribed by the Govt. of NCT of Delhi.*
- 4. DCW will adhere to the Pattern of Financial Assistance as approved by FD, Govt. of NCT of Delhi.”*

[Emphasis Supplied]

4. The Petitioners emphasise that despite the above-noted findings of the Committee, Respondent No. 2 has proceeded to terminate the services of all contractual staff, without any cogent basis.

5. Issue notice. Ms. Zehra Khan and Mrs. Avnish Ahlawat, accept notice on behalf of Respondents No. 1 and 2, respectively. They seek and are granted four weeks' time to file their counter affidavits.

6. Mrs. Ahlawat argues that the engagement of Petitioners on a contractual basis by DCW lacked authorization by the competent authorities. She emphasizes that, according to existing laws, DCW is prohibited from hiring staff members or offering salaries and appraisals without the requisite official approvals. Mrs. Ahlawat states that only 40 posts had been sanctioned for DCW, and consequently, any appointments in excess are deemed unauthorized and cannot be sustained legally. She also indicates that approximately eight Petitioners might be eligible for retention. However, she clarifies that a final decision regarding their employment will be subject to further deliberations and evaluations. Additionally, Mrs. Ahlawat assures that the ongoing programs and special cells within DCW shall continue to operate effectively, staffed by personnel other than those engaged on a contractual basis under dispute. Mrs. Ahlawat further submits that the personnel currently facilitating the operations of the DCW have either been appointed against officially approved positions, or are outsourced from third-party organizations, including NGOs. As regards the minutes of meeting of the Committee, she



has presented a note/ corrigendum issued by Respondent No. 2 dated 31st July, 2020, whereby the Committee has decided not to pursue their decision to accommodate the Petitioners against the newly created posts.

7. *The Court has carefully considered the submissions advanced by both parties. As regards the Petitioners' right to continue on the contractual positions, the Court does not find any prima facie case to grant them any interim relief. Respondent No. 2 has demonstrated that the Petitioners were employed without the requisite authorization and exceeded the approved staff capacity. Consequently, this lack of procedural compliance renders their continued employment legally untenable.*

8. *However, the Court acknowledges the broader implications of the case, given the critical role of DCW in safeguarding and uplifting the interests of women in the state. The numerous programmes initiated by them have assisted several victims in distress, underscoring their crucial role. In this context, Mr. Rajshekhar Rao, Senior Counsel representing DCW, has raised an apprehension that the termination of contractual staff could adversely affect the DCW's operations, who are handling integral responsibilities, such as the Rape Crisis Cell, Crisis Intervention Cell, and the Anti-Human Trafficking and Rehabilitation Cell. Consequently, the Court's immediate priority is to ensure that the functioning of the organization, their programmes, and special cells is not hindered by a lack of workforce. On this aspect, although Mrs. Ahlawat has assured that none of the programmes run by DCW will be hampered and their functioning will continue, the Court would like to keep an oversight. She has submitted that the Commission currently has an adequate strength of personnel that would assist in its functioning, which the Court would like to scrutinize through the submission of a detailed staffing report.*

9. *In view of the above statement of Mrs. Ahlawat, the Court directs Respondent No. 2 to submit a comprehensive affidavit/ staff report, outlining the current staffing configurations and the specific roles played by both permanent and contractual personnel, within two weeks from today. The affidavit shall also detail the current framework and staff strength and structure of the DCW. It must also give a clear account of the measures taken to ensure that essential services, such as the Rape Crisis Cell, Crisis Intervention Cell, and Anti-Human Trafficking and Rehabilitation Cell, Acid Watch and Rehabilitation Cell, Sahyogini Cell, Mobile Helpline, remain fully operational and effective. Additionally, the affidavit must provide a detailed analysis of how the officially sanctioned positions are being utilized and the extent to which third-party personnel, sourced from contractors, contribute to DCW's operations.*

10. *Re-notify on 21st October, 2024."*



4. Counsel for the Respondents, in terms of the Court's directions, have filed their counter affidavit. The relevant portion of the said affidavit reads as under:

- “3. *That the appointment of the Petitioners is de-hors the Rules without approval by the Hon'ble Lt. Governor, against non-sanctioned posts, the same is illegal, void ab-initio. The Petitioners have no legal right to continue on the posts where they were appointed illegally by an authority not legally entitled to appoint them, therefore the Hon'ble Court in exercise of powers under Article 226 of the Constitution of India, will not entertain petition seeking continuation of illegal engagements. The appointments being void ab-initio, no enforceable legal right has accrued to the Petitioners on the basis of illegal appointments. Furthermore, continuation of petitioners would amount to giving premium to those whose engagement itself is in contravention to the statute under which they have been appointed. Reliance is placed upon judgment dated 22.09.2022 in W.P.(C)6526/2021 titled, **GNCTD vs. Priyanka Renu vs District Session Judge** reported as (2014) 15 SCC 731 and **Shiv Kumar Vyas vs. IGNOU & Ors.** reported as 2000 (53) DRJ 781. The aforementioned judgments are annexed herewith and marked as **ANNEXURE-R2(COLLY)**.*
4. *That the appointments of the Petitioners have been made without following the extant provision of reservation for SC/ST/OBC as has been prescribed by DoPT vide OM dated 24.09.1968 and reiterated vide OM dated 15.05.2018 for reservation in temporary appointments lasting for 45 days or more. Since the reservation for SC/ST/OBC was not followed, the engagement of the Petitioner has been made in gross violation of the Constitutional Provisions on Reservation, thus, void ab-initio and patently illegal. Copy of DoPT OM dated 24.09.1968 and OM dated 15.05.2018 are annexed here with and marked as **ANNEXURE - R3 (COLLY)**. Further, Hon'ble Supreme Court of India in WP(C) No. 1100/2022 vide order dated 03.10.2023 reiterated for compliance of DoPT O.M. dated 24.09.1968 and OM dated 15.05.2018 in all engagements which are to last for 4 days or more **ANNEXURE-R4 (COLLY)**.*
5. *That the engagement of the Petitioners at unsanctioned posts has been done to allow backdoor entry to posts instrumental in discharging functions of a Statutory body, where an officer*



selected through UPSC/DSSSB takes an Oath of the Constitution of India before he is given the Government Assignments. Such officers are required to maintain secrecy and deals with highly sensitive policies of the Government. Time and again, the Hon'ble Courts have emphasized that recruitment to posts with in the government has to be done in a transparent manner, following Articles and 21 of the Constitution of India, 1950 and other applicable Rules and procedures.

6. *That as far as recruitment to positions/posts in Govt. of NCT of Delhi is concerned they are officials selected in the service having four grades in DASS service, Grade-I, II, III and IV. The Rules prescribe the procedure for all categories giving the minimum education qualification and method of recruitment i.e. direct recruitment or promotion/direct recruitment. The selection is made after following the due process by DSSSB and the selected candidates are put on probation. Recruitment is made under the Delhi Sub-ordinate Services Rules, 1967 (DASS Rules) as amended from time to time, lastly amended on 26.05.2022. The services were initially in Grade-I, II, III and IV which came in the category Group-B, C and D. After the recommendation of the 6th Pay Commission Group D has been upgraded to Group C and now no recruitment is made to Group D. However, the recruitment is made as MTS with one employee performing various jobs which were performed by Group D employees through outsource.*
7. *That the Delhi Sub-ordinate Services Rules in Schedule 1 also prescribed the posts that come in this category. So also, the last amendment made on 24.05.2022, indicates the constitution of service and its classification. Grade I posts have been classified as Central Civil Service Group - B Gazetted, Grade II posts as Central Civil Service Group B Non- gazetted, and Grade-III & Grade -IV posts as Group C Non-gazetted. The number of posts in various grades in the service with paymatrix has been specified in Schedule-1. Appointment in service is direct recruitment/promotion and direct recruitment is through DSSSB. The numbers of posts sanctioned in the Departments are also identified in the Annexure-1 of the Schedule. Copy of the recruitment rules are annexed herewith and marked as ANNEXURE-R5."*

5. As noted above, the Deputy Director (WEC), Department of Women and Child Development, Government of NCT of Delhi, has apprised the Court through a counter-affidavit that the Petitioners were engaged in



unsanctioned posts, allegedly to facilitate backdoor entry into government service. It has further been contended that the appointments were made in violation of established recruitment rules, without the requisite approval of the Hon'ble Lt. Governor, and for positions that were never formally sanctioned. Consequently, the Respondents assert that such appointments are illegal and void *ab initio*. Thus, it is argued that the continuation of the Petitioners on the said posts would amount to giving premium to those whose engagement itself is in contravention of the statute under which they have been appointed. The stance on this issue is further reinforced by the decisions in *GNCTD vs. Priyanka Renn vs District Session Judge*¹ and *Shiv Kumar Vyas vs. IGNOU & Ors.*²

6. It must be noted that apart from the challenge to the Petitioners' appointments on the grounds that they were made against unsanctioned posts, it is an incontrovertible fact that the Petitioners' employment, admittedly contractual in nature, has been terminated. A catena of judgements of this Court have held that contracts which are determinable in nature and have been terminated by one party to the contract, cannot be revived or restored by a Court and the specific performance of the same cannot be sought.³ This court cannot extend or revive or contract which has already been terminated by the Respondents *vide* order dated 29th April, 2024 and 21st October, 2024. Directing reinstatement, in the absence of any legal right for the Petitioners to continue holding these posts, would not only effectively convert such contractual appointments into permanent positions

¹ (2014) 15 SCC 731

² 2000 (53) DRJ 781f t

³ *Ads Exhibition (P) Ltd. v. Busworld International Cooperatieve Vennootschap Met Beperkte Anasprakelijkheid*. 2020 SCC OnLine Del 351. Also see: *Rajasthan Breweries Ltd. v. Stroh Brewery Co.*,



but also undermine the statutory framework governing public service appointments.

7. Before parting it must be noted that the counsel for the Respondents very fairly states that the salary of the Petitioners will be paid up until the date of their engagement with the Respondents.

8. In light of the above, the Petitioners have no right to seek the reliefs sought in the present petition and accordingly the same is dismissed along with pending applications, if any.

SANJEEV NARULA, J

NOVEMBER 14, 2024

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2000 SCC OnLine Del 481.

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