

Neutral Citation Number: 2022/DHC/005459

\$~68&69

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

% *Date of Decision: 09th December, 2022*

68

+ CONT.CAS(C) 873/2022

AADESH KUMAR AND ORS. Petitioners

Through: Mr. Harpreet Singh, Mr. Gagan Chawla, Ms. Suhani Mathur and Mr. Jatin Kumar Gaur, Advocates with Petitioners-in-person.

versus

SH. AMIT SINGLA AND ANR. Respondents

Through: Mr. Naushad Ahmed Khan, Advocate for R-1/GNCTD.

Mr. Gautam Narayan, Additional Standing Counsel with Mr. Unmukt Gera, Advocate for R-2.

69

+ W.P.(C) 9643/2022

AADESH KUMAR & ORS. Petitioners

Through: Mr. Harpreet Singh, Mr. Gagan Chawla, Ms. Suhani Mathur and Mr. Jatin Kumar Gaur, Advocates with Petitioners-in-person.

versus

GOVT. OF NCT OF DELHI & ANR. Respondents

Through: Mr. Naushad Ahmed Khan, Advocate for R-1/GNCTD.

Mr. Gautam Narayan, Additional Standing Counsel with Mr. Unmukt Gera, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

Neutral Citation Number: 2022/DHC/005459

JUDGEMENT

JYOTI SINGH, J. (ORAL)

W.P.(C) 9643/2022 & C.M. APPL. 28765/2022 (for ex-parte ad-interim directions to the Respondents, by Petitioners), 49108/2022 (for vacation of interim order, by Respondents)

1. Present writ petition has been filed seeking the following reliefs:-

- “(i) To call for the records of the case;*
- (ii) To direct the Respondent department to not to terminate the services of the petitioners; and*
- (iii) Consequently, direct the respondent to continue their service as ANM's in respondent department.*
- (iv) To award costs and expenses in favour of the Petitioner.”*

2. As the factual matrix goes, appointments of the Petitioners were made pursuant to an Advertisement dated 04.05.2021, during the Pandemic COVID-19 when Professionals were urgently required to man the COVID-19 Centers run by the Delhi Government. It was clearly stipulated in the advertisement that the posts in question were to be filled on short term/adhoc basis till 31.07.2021, extendable as per requirement. Offer of appointment has been placed on record which reaffirms the position that period of engagement of the Petitioners was purely on short term/adhoc basis at consolidated emoluments fixed at Rs.40,000/- per month. Copy of offer of appointment of one of the Petitioners is as follows:-

“Chairman, Integrated District Health Society West District, Delhi is pleased to offer you engagement for the Post of Auxiliary Midwife (ANM) on short term basis/ adhoc for covid vaccination on the terms & conditions as given below:

- 1. The period of engagement is purely on short term/adhoc basis upto 31/07/2021.*
- 2. The period of engagement may be extended further as per requirement of the IDHS, SWD.*

Neutral Citation Number: 2022/DHC/005459

3. *Emoluments to the Post are fixed at Rs. 40,000/- (Rupees Forty Thousand Only) per month consolidated. No other allowance/claim by whatsoever name including D.A. is permissible.*

4. *Casual Leave @ 2.5 per month to be governed as per rules of casual leave.*

5. *Any unauthorized absence from duty for more than five days will lead to termination of the period of engagement.*

6. *You will not be entitled to any other financial benefits viz. allowances, perks, bonus, medical reimbursement etc. other than the monthly remuneration (tax will be deducted at source, as per rules) as mentioned above.*

7. *Your place of joining shall be the Integrated District Health Society, South west District, 2nd Floor, dispensary complex, Sec-10, Dwarka, New Delhi-110075. Further posting can be anywhere in South West District, Delhi.*

8. *Timings for the duties shall be according to your place of duty or as decided by IDHS, SWD and place of posting shall be anywhere in South west district.*

9. *The work will be same as observed at the place of posting or as decided by IDHS, SWD.*

10. *You will be under the overall administrative control of Mission Director, IDHS, SWD.*

11. *The Society reserves the right to terminate this engagement from the post without assigning any reason. Similarly, you shall have to give a Notice of one month before you may decide to resign from the post or deposit one month before you may decide to resign from the post or deposit one month's remuneration in lieu of the same.*

12. *If it is discovered at a later stage that you have furnished wrong information or documents, based on which your selection has been made, the Society reserves the right to terminate your services forthwith besides taking recourse to other legal proceedings.*

13. *If you agree to the above Terms & Conditions, you may join the office as mentioned in the para-6 above with immediate effect of receipt of letter, failing which it will be presumed that you are not interested in the assignment & the offer shall stand automatically withdrawn. The joining time shall not be extended under any circumstances.*

This issues with prior approval of Chairman, Integrated District Health Society, South West District.”

3. Perusal of the advertisement and the appointment letter leaves no doubt that Petitioners were appointed purely on short term/adhoc

Neutral Citation Number: 2022/DHC/005459

basis upto 31.07.2021. The period of engagement was extendable only if there was further requirement from the IDHS, SWD.

4. On 09.06.2022, an order was issued by Respondent No. 2, in which hiring of 48 Vaccinators for North District was kept in abeyance. Apprehending that the services of the Petitioners would be discontinued, present writ petition was filed. *Vide* order dated 29.06.2022, this Court directed that the service conditions of the Petitioners will not be changed till the next date of hearing. Reading of the order reflects that the interim order was granted based on an earlier interim order dated 06.06.2022 passed by the Vacation Bench in W.P.(C) 9416/2022.

5. Respondents have filed an application being C.M. Appl. 49108/2022 for vacation of the interim order dated 29.06.2022 wherein it is stated that the Petitioners have no vested right to be appointed as ANMs or to claim extension of their term, as the terms and conditions of the employment made it clear to them that the appointment was purely on short term/adhoc basis. Petitioners had accepted the appointment letters with their eyes open and were completely aware of their rights. It is further averred that requirement for short term temporary additional manpower had arisen due to urgent requirement of boosting COVID-19 vaccinations in the city and now that almost the entire population of Delhi has been vaccinated with two doses and the rate of vaccination has substantially reduced with the Centers having been shut down, most of the staff has become surplus, compared to the workload earlier. Since the pace of vaccination has started to recede, the Director, Department of Family & Health Welfare, GNCTD had issued an order on 24.03.2022 discontinuing the fixed CVCs operating in schools/educational

Neutral Citation Number: 2022/DHC/005459

Institutions. It is also pointed out that the interim order was granted to the Petitioner in the present petition relying on an interim order dated 06.06.2022, in W.P.(C) 9146/2022, however, the said petition has been disposed of as not pressed and consequently, the interim order stands vacated.

6. I have heard the learned counsels for the parties and also perused the advertisement dated 04.05.2021.

7. There is no gainsaying that it was clearly stipulated in the advertisement that the posts which were advertised, were on account of an urgent requirement to open up vaccination Centers during pandemic COVID-19 and were to be filled purely on short term/adhoc basis till 31.07.2021, subject to further extension, if required. The offer of appointment issued to the Petitioners reiterated the said position. It is therefore clear that Petitioners cannot claim a vested right to assert that their services should be continued indefinitely. Once a categorical stand is taken by the Respondents that the CVCs have shut down as the requirement of vaccinations in school and educational Institutions has considerably reduced and the professionals hired during the surge of COVID-19 have become surplus, this Court cannot in exercise of its jurisdiction under Article 226 of the Constitution issue a mandamus to the Respondents to extend the period of service of the Petitioners and/or direct their continuance. No writ of mandamus can be issued in these facts and circumstances, restraining the Respondents from dispensing with the services of the Petitioners. Further, this Court cannot also overlook the fact that the interim order in the present writ petition was granted in favour of the Petitioners on 29.06.2022, based on an interim order dated 06.06.2022, passed in another writ petition, as

Neutral Citation Number: 2022/DHC/005459

aforementioned, which has since been disposed of, vacating the interim order.

8. At this stage, learned counsel for the Petitioners prays that the Petitioners be at least paid their emoluments for the period they have worked *albeit* under the interim order of the Court. There is resistance on behalf of the Respondents to grant the emoluments and it is also contended by Mr. Gautam, that some of the Petitioners have taken alternative employment during this period.

9. Mr. Harpreet Singh, learned counsel for the Petitioners, however, on instructions from the Petitioners, who are present in Court, submits that only Petitioner No. 1 has taken alternative employment during this period and that too, for a very brief spell.

10. This Court finds merit in the contention of the learned counsel for the Petitioners to this extent. While it may be true that Petitioners were continuing to discharge their services under the interim order of this Court w.e.f. 29.06.2022, the fact remains that there is no dispute by the Respondents that they were rendering services. It needs no overemphasis that discharging the functions of ANMs, Petitioners have contributed to a large extent to the society in the most testing and unprecedented times of COVID-19 and it would be travesty of justice if they were deprived of their emoluments for the period they served the Respondents and the society. Accordingly, it is directed that the Petitioners, save and except, Petitioner No. 1 shall be paid their salaries, emoluments and/or any other dues which are payable to them in terms of the offer of appointment and in accordance with law.

11. The payments shall be released by the Respondents within a period of six weeks from today.

Neutral Citation Number: 2022/DHC/005459

12. Insofar as Petitioner No. 1 is concerned, since there is a dispute with regard to the period of his employment with the Respondents, it is open to Petitioner No. 1 to make a representation to the Respondents along with documents pertaining to his alternate employment in the relevant period, if any. It is open to the Respondents to verify the documents and in case it is found that Petitioner No. 1 has worked with the Respondents for any period during which the interim order of this Court was operative, he shall be paid his proportionate salary and other emoluments.

13. Writ petition along with the pending applications is disposed of, in the aforesaid terms.

CONT.CAS(C) 873/2022

14. In view of the order passed in W.P.(C) 9643/2022 above, contempt notice is discharged.

15. Contempt Petition is, accordingly, disposed of.

DECEMBER 09, 2022/rk/shivam **JYOTI SINGH, J**