

Vandana Sharma & Ors. vs Union Of India & Ors. on 2 April, 2025

Author: Vibhu Bakhru

Bench: Vibhu Bakhru

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgement delivered on:

+ LPA 321/2024 CM APPL. 23754/2024 CM APPL. 52912/2024
VANDANA SHARMA & ORS.Appellant

Versus

UNION OF INDIA & ORS.

+ LPA 806/2024 CM APPL. 47710/2024
VANDANA SHARMA & ORS.

versus

UNION OF INDIA & ORS.

Advocates who appeared in these cases

For the Appellants : Mr. Rahul Shukla and Mr.
Singh, Advocates for th

For the Respondents : Ms. Avshreya Pratap Sin
Usha Jamwnal, Ms. Harsh
Mr. Siddhant Nagar, Adv
R1/UOI.
Ms. Avnish Ahlawat, SC
Singh, Ms. Laavanya Kau
Alam, Mr. Mohnish Sehra
GNCTD.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

Signature Not Verified LPA 321/2024 & LPA 806/2024
Signed By:NEELAM
SHARMA
Signing Date:02.04.2025
17:08:35

TEJAS KARIA, J

1. The present Appeals are preferred by the Appellants being aggrieved by the orders and judgments dated 28.02.2024 in W.P.(C) No. 13727/2023 and W.P.(C) No. 103/2024 respectively passed by the learned Single Judge of this Court („impugned order ") disposing of the said petitions while observing that since the Appellants have been serving the Respondents as "contractual employees" for many years, they would be considered for regular appointments in similar departments where regular recruitment drives are initiated.

2. The impugned order also directed that the Appellants shall be given due age relaxation in accordance with the rules and the years of actual service rendered towards experience shall also be considered relying upon the ratio laid down by the Hon ble Supreme Court in „Secretary, State of Karnataka & Ors. vs. Umadevi & Ors.' reported in (2006) 4 SCC 1 and „University of Delhi vs. Delhi University Contract Employees Union & Ors. reported in (2021) 16 SCC 71.

FACTUAL BACKGROUND

3. The Appellants were selected as part of the National Iodine Disease Deficiency Control Programme („Project ") and were appointed at Iodine Deficiency Disorder („IDD') Lab established in the premises of Guru Tegh Bahadur Hospital, Shahdara, Delhi in the capacity of „Lab Technician ", „Lab Assistant ", „Technical Officer " and „Statistical Assistant " between the years 1999 to 2013 on „contractual basis ". The terms of the appointment carried the benefits of pay scales applicable to Government of NCT of Delhi („GNCTD "), including the other benefits and leaves.

4. On 30.06.2015, Respondent No.2/GNCTD through respondent No.4/Delhi State Health Mission („DSHM ") decided to have financial and administrative merger of the Project. As part of the financial merger, Respondent No.1, Union of India released the funds to Respondent No.2/GNCTD through Respondent No.4/DSHM. Consequent to the structural integration and merger, DSHM worked as an executive arm of Respondent No.3, State Health Society, Delhi. The merger recognized that the service conditions of the Appellants were different from other contract employees of DSHM.

5. Until 2018-19, the Appellants were paid emoluments in accordance with the terms agreed to under the appointment letters issued by Respondent No.2.

6. However, the dispute on engagement and release of wages to Appellant Nos. 3 & 4 was raised by Respondent Nos. 2 & 4 by describing their engagement „on Deputation Basis " and by disengaging Appellant Nos. 1 & 2 in the financial year 2020-21.

7. Being aggrieved by the action of the Respondents, the Appellants preferred W.P.(C) 8851/2019, W.P.(C) 9619/2019, W.P.(C) 8143/2020, W.P.(C) 8144/2020, W.P.(C) 3096/2020 and W.P.(C) 3115/2020 before this Court. This Court, by various orders passed in the said writ petitions, protected the contractual employment and the salaries of the Appellants. However, by way of a

common judgment dated 28.02.2024, the said writ petitions were dismissed by this Court.

8. By virtue of the order dated 03.10.2023 passed by Respondent No. 4, DSHM, the Project was discontinued w.e.f. 03.10.2023. The Appellants challenged the said direction dated 03.10.2023 by way of W.P. (C) 13727/2023 before this Court. During the pendency of the said writ petition, on account of certain facts emerging from the record/pleas raised in the said petition, writ petition being W.P.(C)103/2024 was preferred by the Appellants before this court seeking the directions as under:

"(i) requiring respondent no.1 to produce its decision on merger of NIDDCP into NHM as part of RCH Flexible pool in the year 2015 involving working and service conditions of petitioners identified and selected for petitioners working into said programme; and

(ii) requiring respondent no. 2 to 4 to produce its records relating to merger of NIDDCP into RCH Flexible Pool vide order dated 28.04.2023 and 03.10.2023 vis-à-vis petitioner's engagement, and by directing respondents to continue petitioners engagements in the activities of NIDDCP are being streamlined with RCH programs".

9. By the impugned order, W.P.(C) 13727/2023 was dismissed, against which the Appellants have preferred LPA No. 321/2024 praying for setting aside of the impugned order. Pursuant to the impugned order, W.P.(C) 103/2024 was also disposed of, against which the Appellants have preferred LPA No.806/2024 praying for setting aside of the order passed in W.P.(C) 103/2024 by directing learned Single Judge to adjudicate and decide upon issues raised in W.P.(C) 103/2024 or in the alternative decide the said LPA No. 806/2024 alongwith LPA No. 321/2024.

SUBMISSIONS BY THE APPELLANTS:

10. The Appellants have raised the following issues in LPA No. 321/2024 that were not considered by the learned Single Judge while deciding W.P.(C) 13727/2023:

(i) If the engagement of Appellants in the Project would be termed as „pure contractual employment ?

(ii) If the Project can be treated as „closed in view of order dated 03.10.2023 issued by Respondent No.4?

(iii) If the order dated 03.10.2023 passed by Respondent No.4 was without competence and authority in view of respondent No.2 s order dated 28.04.2023?

(iv) If the Project is treated as „closed in terms of order dated 03.10.2023 passed by Respondent No.4, should the Appellants be asked to stand in queue with age relaxation for securing regular appointment in the face of existing vacancies due for

filling and warranted appointments of Appellants against notified vacancies?

11. The Appellants filed an additional affidavit dated 03.05.2024 stating that the Project is still ongoing as evidenced by the approval released by Respondent No.1, Union of India for programme implementation plan for NCT of Delhi for F.Y. 2024-25 and F.Y. 2025-26. The budget summary of the Project is part of RCH Flexi-Pool.

12. It was further submitted that the positions held by the Appellants are included in the approval given by Respondent No.1, Union of India for F.Y. 2024-25 and F.Y. 2025-26. It was also submitted that Respondent No. 1, Union of India has continued the Project for all the other States/Union Territories in consonance with Annual Reports of 2020-21 and 2022-23, which require that the goal of the Project is to prevent and control IDD in the country by achieving 100 per cent consumption of adequately iodated salt (15 ppm) at the household level.

13. The Appellants have submitted that they are entitled to regularization in accordance with the judgment in the case of Umadevi (supra) in a time bound manner within three (3) months against the vacancies existing for recruitment with Respondent No.1, Union of India. It was submitted that a reclassification from temporary to regular status in view of the evolution of their service conditions over time was warranted. Any failure to recognize the substantive nature of the employment, roles and their continuous service akin to permanent employee would be contrary to the principles of equality, fairness, and intent behind employment regulations.

SUBMISSIONS BY THE RESPONDENTS:

14. Respondent No.1/Union of India has filed a short affidavit dated 09.10.2024 submitting that as per order dated 03.10.2024 issued by Respondent No.4, IDD is no more a public health issue in the NCT of Delhi and, therefore, the Project under DSHM has been discontinued in the NCT of Delhi w.e.f. 03.10.2023.

15. It is further submitted by Respondent No.1, Union of India, that Public Health and Hospitals are subjects featuring in Entry 6, List II of Seventh Schedule of the Constitution of India, which specifically addresses „Public Health & Sanitation: Hospitals & Dispensaries thereby designating the primary and exclusive responsibility for Public Health and Hospitals to the respective State Governments.

16. It was further submitted that Human Resources related issues fall within the ambit and domain of the respective State Governments/Union Territories and, therefore, the respective State Governments are responsible for the appointments, transfer/termination of services, payment of wage/salary/remuneration etc.

17. It was further submitted that vide a letter dated 11.12.2023, Respondent No.1, Union of India clarified that under the National Health Mission (NHM), annual proposals are submitted by the respective State Governments and the same are granted on the basis of the requirements and justifications provided to the Central Government by the respective State Governments. The said

letter clarified that all the activities under the Project have been streamlined with the Reproductive and Child Health („RCH) programme under the administrative control of the Directorate of Family Welfare and there is no requirement for an additional programme of IDD for NCT of Delhi.

ANALYSIS AND FINDINGS:

18. We have heard the learned counsels for the Appellants and the Respondents, and having considered the commonality of issues arising in LPA No.321/2024 and LPA No.806/2024, both the Appeals are decided by way of this common judgement.

19. Considering the facts and circumstances, there is no cavil that the Appellants were engaged as contractual employees by the Respondents in various capacities that were co-terminous with the Project s closure. Although the Appellants were granted similar benefits which were available to the other regular government employees, the same did not change the nature of their employment.

20. As regards the decision by the Respondent for closure of the Project, the same was based on comprehensive reports produced on record, and it was the prerogative of the Respondents to decide whether the aims and objectives of the Project were adequately achieved. The contention of Appellants that the Project is still running as part of the RCH programme is without any merit as having achieved the objectives of the Project, the Respondents are entitled to continue with the monitoring of the IDD as part of separate ongoing projects, as deemed appropriate. The Appellants are not entitled to seek any direction from this Court for the continuation of the Project and the impugned order has rightly rejected such prayers of the Appellants having extensively discussed various reports produced by the Respondents.

21. In any event, it is not res integra that the decision to close or continue with the Project is a policy decision within the domain of the Respondents and this Court ought not pass any directions regarding the same.

22. The Respondents decision to include the monitoring and supervision of the IDD Project as part of RCH scheme is not arbitrary. Therefore, it would not be apposite for this Court to examine the same in view of the extensive material placed on record showing study and consultation prior to the closure of the Project and including the same as part of the RCH scheme by the Respondents.

23. The impugned order has directed that the Appellants shall be considered for regular appointments in similar departments where regular recruitment drive are held after giving due age relaxation in accordance with the rules and considering the years of actual service rendered towards experience, which direction has not been challenged by the Appellants.

24. In view of the above, there is no infirmity with the findings of the impugned order and no interference is called for in both the Appeals.

25. Accordingly, both Appeals are dismissed without any orders as to costs.

TEJAS KARIA, J VIBHU BAKHRU, J APRIL 02, 2025 'A'/'ST'