

Court No. - 18

Case :- WRIT - A No. - 1453 of 2014

Petitioner :- Shiv Pratap Maurya And 667 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Deptt. Of Medical Health And

Counsel for Petitioner :- Vidhu Bhushan Kalia, Adarsh Saxena, Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C., Mahesh Chandra Chaturvedi, Mohd. Zafar Khan, Nandita Bharti, Puneet Chandra, Ravi Shanker Tiwari

alongwith

Case :- WRIT - A No. - 3407 of 2013

Petitioner :- Vishnu Kumar And 29 Ors.

Respondent :- State Of U.P. Thru Prin. Secy. Medical And Health And Family Andors.

Counsel for Petitioner :- Dinesh Kumar Arya

Counsel for Respondent :- C.S.C.

alongwith

Case :- WRIT - A No. - 3792 of 2013

Petitioner :- Vikrant Singh And 7 Ors.

Respondent :- Union Of India Through Secy. Health And Family Welfare New Del

Counsel for Petitioner :- Sandeep Dixit

Counsel for Respondent :- C.S.C., A.S.G., Kumar Ayush

alongwith

Case :- WRIT - A No. - 4184 of 2013

Petitioner :- Akhand Pratap Singh Tomar And 33 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Medical Health And Family We

Counsel for Petitioner :- Aashish Srivastava, Kanhaiyalal Verma

Counsel for Respondent :- C.S.C.

alongwith

Case :- WRIT - A No. - 5647 of 2013

Petitioner :- Govind Singh Chauhan And 17 Ors.

Respondent :- State Of U.P. Thru Prin. Secy. Medical Health

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And Family And Ors.

Counsel for Petitioner :- Aashish Srivastava,Kanhaiya Lal Verma

Counsel for Respondent :- C.S.C.

alongwith

Case :- WRIT - A No. - 5895 of 2013

Petitioner :- Vikas Gaur And 8 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Deptt. Of Medical Health And

Counsel for Petitioner :- Narendra Kumar Pandey

Counsel for Respondent :- C.S.C.,A.S.G.

alongwith

Case :- WRIT - A No. - 6297 of 2013

Petitioner :- Mayank Kishor Tiwari And Others

Respondent :- State Of U.P.Thr.Prin.Secy.Medical Health And Family Welf.Andors

Counsel for Petitioner :- Narendra Kumar Pandey

Counsel for Respondent :- C.S.C.

alongwith

Case :- WRIT - A No. - 6331 of 2013

Petitioner :- Atul Kumar Singh

Respondent :- State Of U.P. Through Prin. Secy. Medical Health And Family We

Counsel for Petitioner :- Ravindra Nath Mishra,K.K.Singh,Rajeev Kumar Ojha

Counsel for Respondent :- C.S.C.

alongwith

Case :- WRIT - A No. - 6378 of 2013

Petitioner :- Pushpendra Kumar And 16 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Deptt. Of Medical Health And

Counsel for Petitioner :- Narendra Kumar Pandey

Counsel for Respondent :- C.S.C.,A.S.G.,Ajay Kumar Singh

alongwith

Case :- WRIT - A No. - 6503 of 2013

Petitioner :- Sanjeev Kumar Sharma And 27 Ors.

Respondent :- Union Of India Through Secy. Health And Family Welfare New Del

Counsel for Petitioner :- Ganga Prasad Mishra

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Counsel for Respondent :- C.S.C.,A.S.G.,Ghaus Beg

alongwith

Case :- WRIT - A No. - 6530 of 2013

Petitioner :- Vijendra Kumar And 9 Ors.

Respondent :- Union Of India Through Secy. Health And Family Welfare New Del

Counsel for Petitioner :- Aashish Srivastava

Counsel for Respondent :- C.S.C.,A.S.G.,Ajay Kumar Singh

alongwith

Case :- WRIT - A No. - 6843 of 2013

Petitioner :- Shivam Singh And 43 Others

Respondent :- State Of U.P.Thru.Prin.Secy. Medical Health And Family Welfare

Counsel for Petitioner :- Prashant Singh Atal,Rajat Pratap Singh

Counsel for Respondent :- C.S.C.

alongwith

Case :- WRIT - A No. - 6898 of 2013

Petitioner :- Umesh Chandra Tripathi And 38 Ors.

Respondent :- Union Of India Through Secy. Ministry Of Health And Family Wel

Counsel for Petitioner :- Amit Kumar Tiwari,Vivek Prakash Mishra

Counsel for Respondent :- C.S.C.,A.S.G.,Ajay Kumar Singh

alongwith

Case :- WRIT - A No. - 7134 of 2013

Petitioner :- Akhilesh Tiwari And 88 Ors.

Respondent :- Union Of India Through Secy. Health And Family Welfare New Del

Counsel for Petitioner :- O.P.Tiwari

Counsel for Respondent :- C.S.C.,A.S.G.,Mahendra Kumar Misra

alongwith

Case :- WRIT - A No. - 1658 of 2014

Petitioner :- Vivek Sharma And 74 Ors.

Respondent :- Union Of India Through Secy. Health And Family Welfare New Del

Counsel for Petitioner :- Aashish Srivastava

Counsel for Respondent :- C.S.C.,A.S.G.,Nandita Bharti

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alongwith

Case :- WRIT - A No. - 1775 of 2014

Petitioner :- Amit Kumar Mishra And 64 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Deptt. Of Medical Health And

Counsel for Petitioner :- Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C.,A.S.G.,Ajay Kumar Singh

alongwith

Case :- WRIT - A No. - 1812 of 2014

Petitioner :- Vineet Kumar Mishra And 10 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Medical Health And Family We

Counsel for Petitioner :- Vishal Kumar Upadhyay

Counsel for Respondent :- C.S.C.,A.S.G.,Ajay Kumar Singh

alongwith

Case :- WRIT - A No. - 1827 of 2014

Petitioner :- Gulam Murtaza And 10 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Medical Health And Family We

Counsel for Petitioner :- Vishal Kumar Upadhyay

Counsel for Respondent :- C.S.C.,A.S.G.

alongwith

Case :- WRIT - A No. - 1848 of 2014

Petitioner :- Vikas Gaur And 45 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Deptt. Of Medical Health And

Counsel for Petitioner :- Narendra Kumar Pandey

Counsel for Respondent :- C.S.C.,A.S.G.,Ajay Kumar Singh

alongwith

Case :- WRIT - A No. - 1894 of 2014

Petitioner :- Sagar Ahmad And Ors.

Respondent :- State Of U.P.Throu Prin.Secy.Deptt.Of Medical Health And Ors.

Counsel for Petitioner :- Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C.,A.S.G.,Anuj Dayal

and

Case :- WRIT - A No. - 1947 of 2014

Petitioner :- Subhash Chandra Kushwaha And 2 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Medical

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Health And Family We

Counsel for Petitioner :- Vishal Kumar Upadhyay, Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C.,A.S.G.

alongwith

Case :- WRIT - A No. - 1981 of 2014

Petitioner :- Sanjeev Kumar Sharma And 16 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Health And Family Welfare Lk

Counsel for Petitioner :- Ganga Prasad Mishra

Counsel for Respondent :- C.S.C.,A.S.G.

alongwith

Case :- WRIT - A No. - 2003 of 2014

Petitioner :- Arvind Kumar Yadav And 64 Ors.

Respondent :- State Of U.P. Thru Prin.Secy.Deptt.Of Medical Health And Ors.

Counsel for Petitioner :- Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C.,A.S.G.

alongwith

Case :- WRIT - A No. - 2122 of 2014

Petitioner :- Hemant Kumar And 18 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Deptt. Of Medical Health And

Counsel for Petitioner :- Narendra Kumar Pandey

Counsel for Respondent :- C.S.C.,A.S.G.

alongwith

Case :- WRIT - A No. - 2266 of 2014

Petitioner :- Deepak Kumar Shankhdhar And 32 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Deptt. Of Medical Health And

Counsel for Petitioner :- Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C.,A.S.G.

alongwith

Case :- WRIT - A No. - 2399 of 2014

Petitioner :- Sajid Husain And 15 Ors.

Respondent :- State Of U.P. Thru Prin.Secy.Deptt.Of Medical Health And Ors.

Counsel for Petitioner :- Rajat Pratap Singh

Counsel for Respondent :- C.S.C.,A.S.G.,Ajay Kumar Singh

alongwith

Case :- WRIT - A No. - 3684 of 2014

Petitioner :- Tanveer Ahmad And 38 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Deptt. Of Medical Health And

Counsel for Petitioner :- Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C.,A.S.G.,Ajay Kumar Singh

alongwith

Case :- WRIT - A No. - 4527 of 2014

Petitioner :- Monu Kant Chaubey And 176 Ors.

Respondent :- Union Of India Through Secy. Govt. Of India Health And Family

Counsel for Petitioner :- Aashish Srivastava,Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C.

alongwith

Case :- WRIT - A No. - 5482 of 2014

Petitioner :- Ankit Singh And 7 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Deptt. Of Medical Health And

Counsel for Petitioner :- Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C.,A.S.G.,Ajit Kumar Dwivedi

alongwith

Case :- WRIT - A No. - 5624 of 2014

Petitioner :- Anand Kumar And 13 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Deptt. Of Medical Health And

Counsel for Petitioner :- Sandeep Dixit,Mohd. Shahzaan Naiyer,V.B.Kalia,Varadraj Shreedutt Ojha

Counsel for Respondent :- C.S.C.,A.S.G.,Ajay Kumar Singh

alongwith

Case :- WRIT - A No. - 6419 of 2014

Petitioner :- Jasmant Prakash And 25 Ors.

Respondent :- Union Of India Through Secy. Health And Family Welfare New Del

Counsel for Petitioner :- Aashish Srivastava,Anjani Kumar

Counsel for Respondent :- C.S.C.,A.S.G.

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alongwith

Case :- WRIT - A No. - 6640 of 2014

Petitioner :- Praveen Kumar And 28 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Deptt. Of Medical Health And

Counsel for Petitioner :- Rajat Pratap Singh

Counsel for Respondent :- C.S.C.,A.S.G.

alongwith

Case :- WRIT - A No. - 6755 of 2014

Petitioner :- Vikas Gaur And 22 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Deptt. Of Medical Health And

Counsel for Petitioner :- Narendra Kumar Pandey

Counsel for Respondent :- C.S.C.,A.S.G.,Mahendra Kumar Misra

alongwith

Case :- WRIT - A No. - 7356 of 2014

Petitioner :- Laxman Agarwal And 53 Ors.

Respondent :- State Of U.P. Thru Prin.Secy.Deptt.Of Medical Health And Ors.

Counsel for Petitioner :- Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C.,A.S.G.

alongwith

Case :- WRIT - A No. - 7638 of 2014

Petitioner :- Ravi Shankar Gond And 30 Others

Respondent :- State Of U.P.Thru.Prin.Secy. Medical Health And Family Welfare

Counsel for Petitioner :- Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C.,A.S.G.,Miss.Alka Saxena

alongwith

Case :- WRIT - A No. - 1643 of 2015

Petitioner :- Nishant Tripathi And 31 Ors.

Respondent :- State Of U.P. Thru Prin.Secy.Medical Health And Family And Ors.

Counsel for Petitioner :- Vishal Kumar Upadhyay,Anoop Kumar Bajpai

Counsel for Respondent :- C.S.C.,A.S.G.

alongwith

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Case :- WRIT - A No. - 2066 of 2015

Petitioner :- Devang Pandey And 55 Ors.

Respondent :- State Of U.P. Thru Prin.Secy.Deptt.Of Medical Health And Ors.

Counsel for Petitioner :- Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C.,A.S.G.,Anand Dwivedi

alongwith

Case :- WRIT - A No. - 3144 of 2015

Petitioner :- Sanjiv Kumar And 26 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Deptt. Of Medical Health And

Counsel for Petitioner :- Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C.,A.S.G.,Arpit Kumar

alongwith

Case :- WRIT - A No. - 4711 of 2015

Petitioner :- Bablu Gautam And 49 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Medical Health And Family Lk

Counsel for Petitioner :- Dinesh Kumar Arya

Counsel for Respondent :- C.S.C.,A.S.G.,Arpit Kumar

and

Case :- WRIT - A No. - 533 of 2016

Petitioner :- Sanjeev Kumar Arya And 39 Ors.

Respondent :- State Of U.P. Thru Prin.Secy.Deptt.Of Medical Health And Ors.

Counsel for Petitioner :- Vidhu Bhushan Kalia

Counsel for Respondent :- C.S.C.,A.S.G.,Satish Chandra Rai

Hon'ble Manish Kumar,J.

1. Heard Shri Sandeep Dixit, learned Senior Advocate assisted by Shri Vidhu Bhushan Kalia, learned counsel for the petitioners, Sri S.B. Pandey, learned Senior Advocate assisted by Shri Mahendra Kumar Mishra, learned Counsel for the Union of India, Shri Kuldeep Pati Tripathi, learned Additional Advocate General assisted by learned Standing Counsel and Shri Puneet Chandra, learned counsel for the National Health Mission.

2. Since in all the petitions same issue & controversy is

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involved, so they have been heard together and decided by this common judgment.

3. All the writ petitions are having almost the identical prayers and it would be difficult to mention the prayers of all the petitions but for convenience, the prayer made in the leading petition No. 1453 of 2014 (Shiv Pratap Maurya and 667 others Vs. State of U.P. and others) are being quoted hereinbelow:-

" i) to issue a suitable writ, order or direction in the nature of Certiorari quashing the impugned orders dated 22.11.2013, 11.12.2013 and 26.02.2014 issued by the respondent no. 3, 7 and 4 respectively, so far as the same provides approval of services of the petitioners till 31.03.2014 and also to the extent the same provides salary/honorarium to Multipurpose Workers only upto 31.03.2014 (as are contained in Annexure No. 1, Annexure No. 2 and Annexure no. 3 respectively to this writ petition) and other consequential orders if any.

ii) to issue a suitable writ, order or direction in the nature of Mandamus commanding the respondents not to give effect to the impugned orders dated 22.11.2013, 11.12.2013 and 26.02.2014 issued by the Respondent no.-3, 7 and 4 respectively, so far as the same provides approval of services of the petitioners till 31.03.2014 and also to the extent the same provides salary/honorarium to Multipurpose Workers only upto 31.03.2014 (as are contained in Annexure No. 1, Annexure no. 2 and Annexure No. 3 respectively to this writ petition) and other consequential orders if any.

iii) to issue a suitable writ, order or direction in the nature of Mandamus commanding the respondents to allow the petitioners to continue on the post of MPWs/MPHW till the continuation of the National Rural Health Mission Scheme and other related schemes launched by the Government of India and to pay them their salary/honorarium as and when the same accrues alongwith their arrears;

iv) to issue a writ, order or direction in the nature of Mandamus commanding the Respondents to fill up the posts of Health Worker (Male) after initiating the regular process of selection for appointment as per the Service Rules, 1997 as amended in the year 1998 and provide preference to the petitioners in appointment and during training on account of their length of service and the nature of job and duties being same after granting required age relaxation in accordance with relevant rules and Government Order;"

4. Appointments were given to the petitioners on different dates

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between the period from October, 2012 till March, 2013 on the post of Multi Purpose Health Workers (Male) (hereinafter referred to as, the M.P. H.W. (Male) for a period of three years under the scheme namely National Rural Health Mission (hereinafter referred to as, the N.R.H.M.) floated by the Ministry of Health and Family Welfare, Government of India.

5. Government of India had also issued guidelines for M.P. H.W. (Male) namely, Guidelines for Multipurpose Health Worker (Male), 2010, (hereinafter referred to as, the Guidelines, 2010) wherein clause 3.1 provides for engagement of M.P. H.W. (Male) for a period of three years.

6. In pursuance of the Guidelines, 2010 the Mission Director, N.R.H.M. vide its letter dated 05.09.2012 had directed all the District Magistrates/Chief Medical Officers of State of U.P. for appointment of MPHWS (Male) as per the scheme floated by the Government of India and in pursuance thereof, all the petitioners were given appointment.

7. On 22.11.2013, the Director, N.R.H.M. issued a letter addressed to the Mission Director, N.R.H.M, U.P. mentioning therein that Government of India has directed to convey approval of contractual appointment of MPHWS (Male) uptill 31.03.2014 and Government of India will bear in payment of wages to the extent of 75% for current financial year subject to certain conditions and it was clarified that further support for contractual MPHWS (Male) will not be provided by the Government of India beyond financial year 2013-14. Against the letter dated 22.11.2013, which is under challenge in the present petitions, an interim order has been granted by this Court vide its order dated 25.03.2014 whereby this Court allowed the petitioners to continue beyond 31.03.2014. The interim order dated 25.03.2014 is being reproduced hereinbelow:-

"Since controversy involved in the aforesaid writ petitions are one and the same, as such they have been connected and heard together.

Heard Mr. S.K. Kalia, learned Senior Advocate Assisted by Mr. Vidhu Bhushan Kalia, learned counsel appearing for petitioners, Mr. K.C. Kaushik, learned Additional Solicitor General for opposite parties no. 2 and 3 as well as Mr. Saurabh Lavania, learned counsel appearing for opposite party no. 4 and the learned Standing Counsel for State.

Mr. S.K. Kalia, learned Senior Advocate, duly assisted by Mr. V.B. Kalia, Advocate, appearing for petitioners submits that

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under the guidelines for Multipurpose Health Worker (Male) 2010 [hereinafter referred to as the "MPHW (M)"], MPHW (M) shall be engaged for initial period of three years. The expenditure shall be shared by the Central Government and the State Government during the said period. The said guidelines also provide that the State Government is required to create requisite number of posts and fill up on regular basis within next three years so that the continuity of these workers is maintained after the initial period of three years, during which the Government of India is to provide financial assistance.

It is submitted that the Scheme under which MPHW (M) have been engaged has been initiated in the year 2012 in the State of U.P. The petitioners shall be allowed to initially continue for three years at least before being absorbed against regular posts sanctioned by the State Government. It is submitted that earlier identically situated persons like petitioners were not getting honorarium after 30th September, 2013 and, as such, had approached the Court by filing Writ Petition No.3792 (SS) of 2013. The Court, after recording the observations that learned Additional Solicitor General of India does not dispute the fact that the Scheme has been extended by the Central Government up to the year 2017, had directed the respondents to allow the petitioners to work and discharge their duties till the next date of listing and pay honorarium on the post, in question under N.R.H.M. Scheme, till the end of financial year 2013-14. It is submitted that in compliance of the aforesaid order the Director, Ministry of Health and Family Welfare (N.R.H.M.-I Section), Government of India vide letter dated 22.11.2013 has conveyed the approval of contractual MPHWS till 31st March, 2014 only.

The submission is that there is no justification for granting approval to the petitioners' engagement for a period up to 31st March, 2014 only when as per the guidelines the petitioners are required to continue for initial period of three years before being absorbed against regular posts created by the State Government. It is submitted that the work and post on which the petitioners are working are very much available and directions be issued to respondents to allow the petitioners to continue after 31st March, 2014.

Mr. K.C. Kaushik, learned Additional Solicitor General of India submits that the Scheme is in fact in two parts; one part is to continue till 2017 whereas the second part of the Scheme under which petitioners have been engaged has been approved for the period up to 31.3.2014 only. It is also submitted that the financial burden after 31.3.2014 is to be borne by the State Government.

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Be that as it may, prima-facie, I am of the view that as per Scheme petitioners are required to be engaged initially for a period of three years. The engagement of petitioners is to be approved on year to year basis. The scheme has started in the State of U.P. in the year 2012 and has to continue initially for three years. The financial assistance is to be provided by the Central Government in the ratio of 85%, 75% and 65% respectively as per letter dated 3.1.2011. The remaining cost shall be shared by the State Government.

The petitioners, as such, shall be allowed to continue after 31.3.2014 and in this regard necessary formalities with respect to approval of their engagement, sanction of project implementation plan, availability of finance etc. shall be done by the authorities concerned and they shall be paid salary/emoluments regularly provided their work and conduct is satisfactory.

Let counter affidavit be filed by the opposite parties within six weeks. In case counter affidavit is filed petitioners may file rejoinder affidavit within two weeks, thereafter.

List thereafter."

8. After passing of the said interim order dated 25.03.2014, the Government of India has issued another letter dated 18.06.2014 communicating the decision that the period of service of the petitioners/MPHWs (Male) has been extended till 30.09.2014 and thereafter the Government of India will not support and the State Government shall bear the cost of payment to the MPHWS (Male). In pursuance of the letter dated 18.06.2014, the Mission Director had also issued a letter dated 09.07.2014 informing the Director General (Medical Health Services) regarding the decision of the Government of India.

9. Learned Counsels for the petitioners have submitted that as per Clause 3.1. of the Guidelines, 2010 issued by the Government of India, the period of service provided was three years and the petitioners are entitled to be treated in service for a period of three years from the date of their appointment on the post of MPHWS (Male).

10. It is further submitted that the petitioners who were appointed in the month of October, 2012 they were entitled to continue on the post till the year 2015 whereas the petitioners who were appointed in the year 2013, they shall be permitted to continue till the year 2016 and payment of their honorarium/salary would be made as per the Guidelines, 2010 laid down by the Government of India as per the ratio divided

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between the Government of India and the State Government.

11. It is further submitted that after the completion of three years of period, the petitioners are entitled for continuity in service on regular basis and the State Government is liable to pay the salary/honorarium after the expiry of three years of period from the date of initial appointment and in support of their submissions, they placed reliance on Clause 3.3 of the Guidelines, 2010.

12. It is further submitted that almost all the petitioners had worked uptill March, 2018 and thereafter they were not permitted to continue and thus they are entitled for the salary from the expiry of period of three years till they had actual worked.

13. On the other hand, Shri S.B. Pandey, learned Senior Advocate & Deputy Solicitor General of India assisted by Mahendra Kumar Mishra, learned counsel for the Union of India has submitted that as per the Clause 3.1 of the Guidelines, 2010, the Scheme was only for a period of three years and not beyond that but it was extended by letter dated 18.06.2014 for a further period of six months i.e. uptill 30.09.2014, so the Government of India is ready to bear its share as per the Clause 3.1 of the Guidelines, 2010 and thereafter it is the State of U.P., who is liable to make the payment till they had taken work from the MPHWs (Male).

14. Whereas, Shri Kuldeep Pati Tripathi, learned Additional Advocate General assisted by learned Standing Counsel has submitted that the petitioners are entitled for the payment only uptill the existence of the scheme i.e. till 30.09.2014.

15. It is further submitted that the payment of salary/honorarium to the petitioners was on the basis of matching grant share of the Government of India and the State Government and after 30.09.2014, the Government of India has not provided any grant or share for the purpose of payment to these petitioners and there is no budgetary provisions for payment to the petitioners.

16. It is further submitted that on 04.02.2016, the State Government had issued a letter to all the Chief Medical Officers of State of U.P. that the Government of U.P. has already closed the scheme under which these petitioners were working and directed the C.M.Os not to take any work from these MPHWs (Male) and if they take work, they will be personally liable for the same.

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17. It is further submitted that the petitioners were not permitted to work after 30.09.2014.

18. Replying thereto, learned counsels for the petitioners have relied on the letter dated 29.10.2018 written by the Director General, Family Welfare which enclosed as annexure No. S.A. 4 to the supplementary affidavit filed on 18.02.2021 in Writ A No. 5624 of 2014 mentioning therein that 394 MPHWS (Male) are working and secondly , the letter of the State Government dated 04.02.2016 directing all the C.M.Os to stop taking work from MPHWS (Male).

19. Learned counsels for the petitioners are not disputing that the number given in the letter dated 29.10.2018 that only 394 MPHWS (Male) were working and not all the petitioners and there was no occasion for the State Government to issue the letter dated 04.02.2016 if the petitioners were not working after 30.09.2014.

20. After hearing learned counsel for the parties and going through the record of the case, the position which emerges out in the present case is that to prevent the people from Vector Bond diseases, the National Vector Bond Control Program was introduced by the Government of India. In the State of U.P., the Vector Bond diseases are a major public health problem. Malaria is prevalent in all 72 districts and a matter of concern in interstate border districts. Filariasis continues to be endemic in 50 districts with a micro filarial rate of 1.5% and above. Kala-azar is endemic in 4 districts of eastern U.P. In around 27 districts Japanese encephalitis is widespread and hyper endemic in 4 districts as indicated in the Scheme itself.

21. Petitioners were appointed on different dates between the period from October, 2012 to March, 2013 so one of the important question which is to be decided would be about the date of implementation of the Scheme introduced by the Government of India. As per Clause 3.1 of the Guidelines, 2010 issued by the Government of India, the Scheme is only for a period of three years, during which it would be functional. The purpose of the scheme is to eradicate and prevention of diseases, as mentioned above and to depute the MPHWS (Male) at different Primary Health Centre in the State of U.P. The Central Government gave approval to the State of U.P. for making appointment under the Scheme only on 05.09.2012.

22. After the approval by the Government of India, the State Government had gone through the process of appointment by making advertisement etc and the appointments were made on different dates from October, 2012 uptill March, 2013. The date

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of implementation of the Scheme thus cannot be before the date of appointment on which these petitioners were given appointment.

23. The scheme would become functional only after the appointments were made which can only be taken as the date of the period of implementation of scheme and the undefined three years of scheme and this period of three years would end in the case of the petitioners, who were appointed in the year 2012 would be 2015 and the petitioners who were appointed in the year 2013 in their case, it would be 2016.

24. As far as the working of the petitioners beyond the expiry of the period of three years, reliance has been placed on Clause 3.3. of the Guidelines, 2010 which is quoted hereinbelow:-

"3.3 The State Governments need to create the requisite number of posts and fill up on regular basis within next three years so that the continuity of these workers is maintained after the initial period of three years during which the Government of India is to provide financial assistance."

25. From the perusal of the same, it comes out that the State Government was required to create the requisite number of posts and fill up on regular basis but no such exercise was done. The purpose of filling up the vacancy on regular basis is for giving continuity to these MPHWS (Male)/petitioners and they may maintained after the end of scheme/expiry of three years period. On the contrary, the letter was issued by the State Government on 04.02.2016 directing the C.M.O.s of the State of U.P. not to take work from these petitioners/MPHWS (Male) and if they will be permitted then the officer concerned will be liable personally. This direction by the State Government is against the interim order dated 25.03.2014 granted by this Court and that too on the stay vacation application preferred for vacating the interim order dated 25.03.2014, no orders have been passed by this Court vacating the order. When the stay order is in operation, then there was no occasion to issue such letters. The C.M.O.s are bound to comply with the orders passed by this Court and not the order issued by the authorities contrary to the orders of this Court.

26. The work was taken from the MPHWS (Male), so after the expiry of the three years period till the work taken from them by the State Government from the petitioners till March, 2018, the State respondents being welfare State is liable to make payment as *Begar* is prohibited under Article 23 read with Article 21 of the Constitution of India. Moreso, the nature of the work was prevention of certain diseases which was definitely

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for the benefit or the interest of the people of the State & broadly in the interest of the State itself. As indicated earlier the Central Government intended that the MPHWs (Male) may be absorbed on regular basis by creating posts. In such circumstances, the State cannot refuse to pay to the MPHWs (Male) till the date they worked. If the work was taken then they must be paid salary for the same.

27. Article 23 of the Constitution of India has wider implications and scope regarding begar i.e. by taking work but not paying for the same which is linked with right to livelihood covered under Article 21 of the Constitution of India.

28. In the present case, the interim order has been granted by this court which is quoted in the preceding paragraph in favour of the petitioners permitting them to continue and the Hon'ble Supreme Court in the case of ***Ram Chet Verma and others Vs. the State of U.P. and others (2020) 3 SCT 640 (SC)*** has held that if the petitioners have served, as per the interim order, obviously they have to be paid the salary for the period they have rendered their services. Non payment of salary to them for the period they have served under the interim order or otherwise would tantamount to taking begar from them, which is prohibited under Article 23 of the Constitution of India. For convenience, the said judgment is quoted hereinbelow:-

"1. Heard the learned counsel appearing for the parties.

2. Leave Granted.

3. Since the Appellants have served as per the interim order, obviously they have to be paid the salary for the period they have rendered their services. Non-payment of salary to them for the period they have served under the interim order or otherwise would tantamount to taking begar from them, which is prohibited Under Article 23 of the Constitution of India.

4. Therefore, we direct that the Appellants shall be entitled to salary for the period they have rendered their services. The salary, if not paid, shall be paid to the Appellants within four weeks from today.

5. It is made clear that if the Appellants have been paid the salary for the aforesaid period, the same shall not be recovered from them.

6. In view of the aforesaid directions, the appeal is disposed of.
"

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29. The Share/Matching Grant of the Government of India and State Governments is provided in Clause 3.1 of the Guidelines, 2010, which is quoted hereinbelow:-

"3.1:- Considering the need for MPHWS(Male) for the disease control programs, the Government of India decided to provide financial assistance to states for contractual remuneration of the MPHWS (Male) at 53,544 PHCs in 235 high focus districts for a period of three years. The remuneration will be paid at a rate of Rs. 6000 per MPHWS per month. The expenditure will be on sharing basis, 85% by NRHM and 15% by State Governments for the first year followed by 75% and 25% for the second year and 65% and 35% for the third years."

30. Clause 3.1 of the Guidelines, 2010 provides for matching grant by the the Government of India and State Government for the purpose of payment salaries to the MPHWS (Male).

31. As per Clause 3.1 of the Guidelines, 2010, the Government of India and the State of U.P. is directed to ensure the payment to the petitioners who were working till the period they had completed three years of service from the date of their initial appointment within a period of two months from the date of certified copy of this order is served.

32. For the period beyond three years petitioners shall be paid by the State Government till they had actually worked . The State Government shall make payment within a period of two months from the date of production of certified copy of this order after verification of 394 MPHWS (Male) of their actual working.

33. In view of the facts, circumstances and discussions made hereinabove, the present petition is **allowed**.

Order Date :- 20.3.2024

Ashish