

STATE PUBLIC SERVICES TRIBUNAL INDIRA BHAWAN,
LUCKNOW

COURT NO.VIII

Present : Hon'ble Mr. K. Ravinder Naik, [V.C(A)]

CLAIM PETITION NO. 1823 OF 2023

1. Rohit Saxena, aged about 32 years, S/o Sri Naresh Chandra, resident of Mohalla Tikatiganj Near Raja Ram Mahila Inter College, District- Badaun-243601.
2. Mohd. Asif Ansari, aged about 29 years, S/o Mohd. Alam, resident of Mohalla Jalandhari Sarai, Meera Sarai Road, District Badaun-243601.
3. Surendra Pal Verma, aged about 31 years, S/o Sri Siya Ram Verma, resident of Village Katka Bahadurpur, Post and Tehsil Jalalabad, District Shahjahanpur- 242221.
4. Gaurav Shaukhddhar, aged about 39 years, S/o Sri Rajveer Shankhdhar, resident of Village Anni, Post- Bharkuiyan, P.S. Civil Lines, Tehsil and District Badayun 243601.
5. Rajeev Kumar, aged about 30 years, S/o Late Om Prakash resident of Village Meera Sarai Near Dr. Banshi Dhar Post, Tehsil and District Badaun 243601.

.....Petitioner

Versus

1. State of U.P through the Additional Chief Secretary, Medical and Health Services, Secretariat, Lucknow- 226001.
2. Director General, Medical and Health Services, U.P. Swasthya Bhawan, Lucknow- 226001.
3. Chief Medical Superintendent, District Hospital (Male), District Badaun..

....Opp.parties

Counsel for the petitioner - Sri Navin Chandra Srivastava

Counsel for the respondents-PO.

J U D G M E N T

This Claim petition has been filed by the petitioners U/s 4 of the U.P. State Public Services Tribunal Act, 1976 for setting aside the order dated 28.2.2023 and 6.4.2023 and to direct the opposite parties to make the payment of salary/honorarium for the period 1.4.2020 to 15.4.2023 and further direct them to allow the petitioners on the posts on which they were working and to pay them salary honorarium regularly.

2. The facts of the case, as averred by the petitioners are that all the petitioners were appointed as Medical Record Asstt. Registration Clerk, Store Keeper and Computer Operator after selection conducted by T&M Services consulting Pvt. Ltd. And NIELIT for their client UPHSSP (Uttar Pradesh Health System Strengthening Project). All the petitioners reported for joining in the office of Chief Medical Superintendent, District Hospital, Badaun. On 31.10.2019, contract between UPHSSP expired, however on 1.11.2019 Chief Medical Superintendent District Hospital, Badaun directed all petitioners to continue to work till further orders. On 4.3.2020, a meeting of Patient Welfare Committee was held in which it was resolved to make payment to the petitioners out of money of Ayushman Bharat Yojna, approved by District Magistrate. The petitioners were paid salary up to March, 2020. Salary for the period April, 2020 to March, 2021 was approved but later, cancelled. Petitioners moved joint application to CMS and requested for payment of their salary. CMS recommended for adjustment of petitioners through letter to DG (Medical and Health Services). The petitioner and CMS continued to correspondences. The petitioners filed a Writ-A 3528/2022 before the Hon'ble High Court and the Hon'ble High Court disposed of the Writ petition finally with the observations below:

“.....In view of the aforesaid contention, the present petition is disposed of permitting the petitioner to file a fresh representation before the respondents no.2 i.e Director General, Medical and Health Services, Uttar Pradesh, Lucknow, who shall pass an order thereupon within a period of two months from the date of filing of the representation along with a copy of this order, considering the aforesaid judgment of this Court as well as the recommendations made in the meeting dated 4.3.2020.”

After this judgment the Finance Controller sent letter to Joint Director for compliance of order dated 31.5.2022 of the Hon'ble High Court. The Director General, Medical and Health Services, U.P. vide order dated 28.2.2023 disposed of the representation of the petitioners and the relevant portion of this order dated 28.2.2023 is being quoted below:

“.....चिकित्सा स्वास्थ्य एवं परिवार कल्याण, बरेली मण्डल बरेली के पत्र दिनांक 09.02.2023 जांच आख्या महानिदेशालय को उपलब्ध करायी गयी, जिसकी जांच निष्कर्ष निम्नवत है—

"उपलब्ध कराये गये अभिलेख एवं दर्ज कराये गये बयानों की समीक्षा के आधार पर जांच कमेटी इस निष्कर्ष पर पहुंची है कि समस्त आउटसोर्सिंग कर्मचारियों का कार्यकाल संबंधित योजना के कार्यकाल की समाप्ति दिनांक 30.09.2019 को ही समाप्त हो जाना चाहिए या परस्तु तत्कालीन एवं वर्तमान सभी मुख्य चिकित्सा अधीक्षक, जिला चिकित्सालय बदायूं द्वारा उपरोक्त सभी आउटसोर्सिंग कर्मचारियों से चिकित्सालय में सेवायें निरन्तर ली जा रही है। उपरोक्त वर्णित सभी कर्मी उपस्थिति पंजिका पर हस्ताक्षर कर रहे है। रिक्त पदों के सापेक्ष आउटसोर्सिंग के माध्यम से कर्मियों को रखे जाने हेतु महानिदेशालय द्वारा जारी निर्देशों का भी पालन नहीं किया गया है।"

अपर निदेशक, चिकित्सा स्वास्थ्य एवं परिवार कल्याण, बरेली मण्डल बरेली/जांच अधिकारी द्वारा उपलब्ध करायी गयी जांच आख्या दिनांक 09.02.2023 में दिये गये उपरोक्त निष्कर्ष के आधार पर यह सिद्ध होता है कि श्री सुरेन्द्र पाल वर्मा व प्रकरण से आच्छादित अन्य समस्त याची आउटसोर्स जैम से मैन पॉवर लिये जाने संबंधी समय-समय पर जारी शासनादेशों के विपरीत नियम विरुद्ध व तत्कालीन मुख्य चिकित्सा अधीक्षक एवं वर्तमान सभी मुख्य चिकित्सा अधीक्षकों के द्वारा मनमाने तरीके से रखे गये वे,

जोकि उपरोक्त अधिकारियों की व्यक्तिगत जिम्मेदारी है, शासन प्रशासन की नहीं। प्रकरण वित्तीय नियमों एवं शासनादेशों के उल्लंघन से संबंधित है जिस हेतु दोषी अधिकारियों के विरुद्ध अनुशासनिक कार्यवाही की संस्तुति प्रदान की जा चुकी है तथा प्रकरण में शासकीय आदेश प्राप्त करने हेतु प्रकरण को शासन संदर्भित किया गया है, वर्तमान में बिना शासकीय अनुमति के किसी भी प्रकार का भुगतान संबंधित आदेश महानिदेशालय से जारी किया जाना सम्भव नहीं है।

अतः उपरोक्त तथ्यों तथा मा० उच्च न्यायालय इलाहाबाद में योजित रिट याचिका संख्या-22404ध2021 द्वारा पारित आदेश दिनांक 27.05.2022 तथा दिनांक 04.03.2020 को जिलाधिकारी बदायूँ की अध्यक्षता में आहूत रोगी कल्याण समिति की बैठक की कार्यवृत्ति पर सम्वक विकोपरान्त श्री सुरेन्द्र पाल वर्मा का प्रत्यावेदन दिनांक 24.06.2022 निस्तारित किया जाता है।

” Thereafter another order dated 6.4.2023 was passed by CMS, District Hospital, Badaun whereby all the five persons were ordered not to work with immediate effect. Hence this claim petition has been filed for the relief, mentioned above.

4. The respondents have refuted the claims of the petitioner in their CA/WS. Considering the observations made by the Hon’ble High Court in Writ Petition no. 3528/2022, Surendra Pal Verma and Ors vs. State of U.P. and Ors, the representation of the petitioners has been decided. The petition is not maintainable. All the petitioners were engaged on short term basis keeping in view shortage of staff and in public interest. There is no illegality or irregularity and the petitioners are not entitled to get any relief.

5. The petitioners filed RA, mostly reiterating the averments made in the claim petition.

6. Petitioners also filed supplementary affidavit, in which, mainly it has been raised that a perusal of the impugned order dated 28.2.2023 indicates that the matter has been referred to the Government and it is not possible to make payment to the petitioners without the permission of the Government. Along with supplementary affidavit, the

petitioners have filed Annexure S-1 in which guidelines have been given for temporary/short terms worker/contractual/outsourcing workers.

7. I have heard Ld. Counsel for both the parties and have perused the record.

8. Undoubtedly, the petitioners were working as contractual employee under CMS District Male Hospital, Badaun. In the U.P. Public Services (Tribunal), the Claim Petitions are filed under Section-4 of the Act, which is necessary to be produced below:

“4. Reference of claim to Tribunal—(1) Subject to the other provisions of this Act, a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal, may make a reference of claim to to the Tribunal for the redressal of his grievance.”

The contention of Ld. Counsel for the petitioner to approach the Tribunal is that the decision is awaited from the Government. What ever the payment disputes of contractual employee is not the jurisdictional matter of this Tribunal. Hence, without going into the merit of the case, on technical ground that the instant case is not maintainable and the cause of action occurred for the appropriate forum, meant for contractual employees. The petitioners have not provided any document of proof that they are public servant. The contractual employees cannot be defined as public servant, as defined in Section-4 of the Act, above. Though the services obtained by the CMS, Badaun for some period by manpower supply contractor, was not available. The order issued, has been rectified later and payment related issues can be redressed by Contract Act or any other suitable Act, whatsoever deemed fit by both parties.

9. In view of the discussions made above, the claim petition is dismissed as not maintainable.

O R D E R

The claim petition is dismissed.

No order as to costs.

Sd/-

(K. Ravinder Naik)

Vice-Chairman.

Judgment signed, dated and pronounced today in the open

Court.

26/2/2026

VKS

Sd/-

(K. Ravinder Naik)

Vice-Chairman